DOCUMENT RESUME

ED 223 855	CE 034 400

AUTHOR	Hamparian, Donna M.; And Others
TITLE	Youth in Adult Courts: Between Two Worlds. Northeast Region. Major Issues in Juvenile Justice Information and Training.
INSTITUTION	Academy for Contemporary Problems, Columbus, Ohio.
SPONS AGENCY	National Inst. for Juvenile Justice and Delinquency Prevention (Dept. of Justice/LEAA), Washington, D.C.
REPORT NO	NCJ-80827
PUB DATE	82
GRANT	78-JN-AX-0038
NOTE	234p.; For related documents see CE 034 347-348 and CE 034 395-402.
PUB TYPE	Reports - Research/Technical (143) -- Information Analyses (070)
EDRS PRICE	MF01/PC10 Plus Postage.
DESCRIPTORS	Adolescents; *Court Litigation; *Court Role; *Courts; *Delinquency; Delinquent Rehabilitation; Due Process; Federal Courts; Justice; Juvenile Courts; Laws; Legal Problems; Legal Responsibility; Public Policy; State Courts; *State Legislation
IDENTIFIERS	*United States (Northeast)

ABSTRACT

State profiles of youth in adult courts were compiled for each of the 50 states, the District of Columbia, and the Federal District Courts, This volume contains profiles for the Northeastern states of Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. The first part of each state profile describes the process by which youths are referred to adult courts and what can happen to them after conviction. Included in this part are descriptions of (1) the court organization, (2) the pertinent statutory provisions in the state code, (3) the relevant cases tried in the state supreme court and the federal courts since 1950, and (4) the correctional placement options for juveniles convicted in adult courts. This information was obtained through a search of the statutes and case law and through telephone interviews with court and correctional officials. The second part of the profile presents data collected from every county in the state on the frequency of referral of youths to adult courts through each of the mechanisms permitted by state law. In addition, demographic information, offense characteristics, and the judgments and sentences received by these youths are described for the most populous counties and counties referring five or more juveniles to adult courts in 1978. (KC)

****
*   Reproductions supplied by EDRS are the best that can be made   *
*   from the original document.   *
****

ED223855

MAJOR ISSUES IN JUVENILE JUSTICE INFORMATION AND TRAINING

Youth in Adult Courts: Between Two Worlds

Northeast Region

AUTHORS

Donna M. Hamparian, Principal Investigator
Linda K. Estep, Research Assistant
Susan M. Muntean, Research Associate
Ramon R. Priestino, Research Associate
Robert G. Swisher, Research Associate
Paul L. Wallace, Research Associate
Joseph L. White, Project Director

Academy for Contemporary Problems
Columbus, Ohio
1982

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

- Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

CE 034 400

U.S. Department of Justice
Office of Juvenile Justice and Delinquency Prevention
National Institute for Juvenile Justice and Delinquency Prevention

Staff

John C. Hall, *Assistant Project Director*
Sandra Clapsaddle, *Administrative Assistant*

Bruce Barker
Kathryn Baybutt
Lisa Beach
Pamela Bertram
Beth Black
Elizabeth Bohlander
Christopher Carr
Ellis Clifton
Roger Coe
Sherry Flannery
Jack Foster, Ph.D.
Barbara Friedman
Sandra Gardner
Rosetta Gooden
Elizabeth Gray
Jerrell Holloway
Gina Hoy
Deborah Levine
Ralph Marcelli
Fred McKinney
Karen Morgan
Wayne Murphy
Frank Nagorka
Molly Ann Parkhill
Charles Phillips, Ph.D.
Judith L. Pilotta
Marian Radebaugh
Marcia Ramm
Sylvia Robinson
Chip Santer
Susan Warner
Kurt Weiland
David Wilder
Christine Wolf

Prepared under Grant Number 78-JN-AX-0038 from the National Institute for Juvenile Justice and Delinquency Prevention, Office of Juvenile Justice and Delinquency Prevention, U. S. Department of Justice.

Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U. S. Department of Justice, the Academy for Contemporary Problems, its member organizations, or the Academy's Project MIJJIT Advisory Committee members.

The Office of Juvenile Justice and Delinquency Prevention reserves the right to reproduce, publish, translate, or otherwise use, and to authorize others to publish and use, all or any part of the original materials contained in this publication.

Printed in the United States of America

Library of Congress Catalog Card Number: 81-67631

Graphic arts by Production Circuit, Inc.

Logo design by Sara Hall

NCJ-80827

3/4

CONTENTS

Introduction iv

Northeast Region State Profiles

Connecticut CT-1
Delaware DE-1
Maine ME-1
Massachusetts MA-1
New Hampshire NH-1
New Jersey NJ-1
New York NY-1
Pennsylvania PA-1
Rhode Island RI-1
Vermont VT-1

PROFILE VOLUME

INTRODUCTION

State profiles on youth in adult courts were compiled for each of the 50 states, the District of Columbia, and the federal District Courts. For purposes of this study, juveniles were defined as persons under 18 years of age.

There are four mechanisms by which juveniles are referred to adult court for trial:

- Judicial waiver
- Concurrent jurisdiction
- Excluded offenses
- Maximum age of initial jurisdiction below age 18

The first part of each profile describes the process by which youths are referred to adult courts and what can happen to them after conviction. Included in this part are descriptions of (1) the court organization, (2) the pertinent statutory provisions in the state code, (3) the relevant cases tried in the state supreme court and the federal courts since 1950, and (4) the correctional placement options for juveniles convicted in adult courts. This information was generally obtained through a search of the statutes and case law, and telephone interviews with court and correctional officials.

The second part of the profile presents data collected from every county in the United States on the frequency of referral of youths to adult courts, for each of the mechanisms permitted by state law. In addition, demographic and offense characteristics and the judgments and sentences received by these youths are described for at least the ten percent most populous counties and counties referring five or more juveniles to adult courts in 1978.

The survey data were collected in several different ways. (The individual state profiles detail the survey process in each state.) First, in a few states, frequency of referrals by counties were available from a state agency. Second, in 22 states, private consulting companies, advocacy organizations, and volunteer groups collected the data through telephone interviews on behalf of the Academy. In half of the states, Academy personnel conducted telephone interviews. In the latter two instances, personnel from the courts and prosecutors' offices were generally the interviewees. (For more detail on the research strategies, please refer to the methodology chapter in Appendix A.)

CONNECTICUT PROFILE

ACKNOWLEDGMENTS

The Academy expresses its appreciation to William H. Carbone, Executive Director, David Fraser, Justice Programs Director, and Thomas Siconolfi, Research Analyst, Connecticut Justice Commission; and Claris Cahan, Librarian, the Connecticut General Assembly for their cooperation and assistance in data collection. In addition, the Academy is grateful to the many other state and local officials who provided the study with the necessary data.

METHODOLOGY

The Connecticut Justice Commission provided the study with a state total of judicial waivers to adult courts of juveniles under 16 years of age. Arrest data on 16 and 17 year olds were provided by the Connecticut Uniform Crime Reporting Program, Connecticut Department of Public Safety. A breakdown by county was unavailable for judicial waivers or arrests of 16 and 17 year olds. However, Phase II data were provided in aggregated form for age, sex, and offenses for both groups and dispositional and sentence data about the youth judicially transferred. State sources indicated that approximately 95 percent of the 16 and 17 year old arrests resulted in court filings.

COURT ORGANIZATION

The superior courts of Connecticut are in 12 locations and are the highest courts of general jurisdiction. Appeals from the courts of common pleas are also frequently heard in superior courts. The limited jurisdiction courts of common pleas, which have 61 judges presiding over 19 geographic areas, have authority over motor vehicle violations, ordinance infractions, criminal misdemeanors and some felony cases, paternity cases, and miscellaneous cases. The 125 probate courts have probate jurisdiction only.

Juvenile courts are separate sessions in family courts, which are in turn separate sessions in superior courts. The family courts operate in 15 locations and have jurisdiction over all proceedings concerning juvenile matters, including traffic violations by juveniles under 16 years of age. These family courts' juvenile sessions will hereafter be referred to as juvenile courts.

An overview of Connecticut's courts by their jurisdiction over juveniles appears below.

CONNECTICUT: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles[a]	Juvenile Traffic[b]
Superior Courts' Juvenile Sessions of Family Courts	Superior Courts' Criminal Sessions	Superior Courts' Juvenile Sessions of Family Courts

a. Youthful offender cases are tried separately from adults but within the Superior Courts' Criminal Sessions.

b. Because of the age of jurisdiction in Connecticut, 16 and 17 year olds are adults under the law and treated as such when arrested for a traffic violation.

TRANSFER PROCESS

Initial juvenile court jurisdiction in Connecticut extends to 16 years of age.[1] During 1978, the year for which the data were collected, there were several ways individuals under the age of 18 could be tried in adult courts.

Judicial Waiver

In Connecticut, in 1978, there were provisions for the judicial transfer of individuals 14 and 15 years of age to adult jurisdiction for two general categories of offenses. First, juveniles of this age charged with the commission of a murder could be transferred following transfer hearings in juvenile courts.[2] At the hearing, courts must have found reasonable cause to believe that juveniles had committed the acts for which they were charged and that there were no appropriate state institution available for these juveniles or that the safety of the community required that the juveniles be under restraint beyond age of majority and that the facilities used for adult court would provide a more effective setting for the case and treatment. If transferred, youth stand trial and are sentenced, if convicted, as adults.

Although the statutes did not specify who was to initiate the transfer hearing, they did specify that the court must see that probation officers complete full investigations of the juveniles' families, social histories, and school records.[3]

Second, the court could judicially transfer youth 14 years old or older charged with the violation of any Class A or B felony (other than murder), provided that the juveniles had previously been adjudicated delinquent for the violation of a Class A or B felony.[4] As with the other provision for judicial transfer, a full investigation was to be conducted by probation officers and transfer hearings must have been held in juvenile courts. The criteria to be considered at the transfer hearing are similar to the other provision, i.e., probable cause to believe that the juveniles have committed the acts for which they were charged; there was no institution or state agency designed for suitable care or treatment of the juveniles; and the facilities used for adult court could provide a more effective setting for the care and treatment of the juveniles.

Youth transferred from juvenile court jurisdiction are referred to the criminal session of superior courts.

Lower Age of Criminal Jurisdiction

Youth 16 and 17 years of age are routinely handled as adults in the Connecticut's courts. These persons are subject to the same court procedures and dispositional alternatives as persons 18 years old or older, and are discussed in a separate section of the data summary (age of jurisdiction) that appears later in this profile.

In 1978, Connecticut also had a "youthful offender" provision.[5] Sixteen- and 17-year-olds could be tried as youthful offenders if they were: (1)charged with crimes which were not Class A felonies, (2) had not previously been convicted of a felony, or (3) had not previously been adjudged a youthful offender. Furthermore, the superior court must consider the severity of the crime, especially including whether or not youth took advantage of victims because of their age or physical incapacities, and youth must agree to trial without a jury. Youthful offenders must be kept separate from adults. All proceedings, except proceedings on the motion for youthful offender status, must be in private and conducted in parts of the courthouse or building apart from adult proceedings. These individuals are not convicted on specific charges, but as youthful offenders. Since the youthful offender option can only be used once, it is generally used for Class B or C felonies rather than misdemeanors.

All records of youthful offenders are originally sealed and are erased if there is no further court involvement. However, such individuals who are convicted of a subsequent felony prior to attaining 21 years of age cannot have their records erased.

Connecticut's General Assembly in 1978 approved some minor language changes for penalties for youthful offenders.[6] However, in 1979 the legislature approved changes which renumbered the judicial waiver provisions and significantly altered those provisions.[7] Effective October 1, 1979, the new mandatory transfer provision requires that children 14 years of age or older charged with (1) murder, or (2) a Class A felony and previously adjudicated delinquent for a Class A felony, or (3) a Class B felony and twice previously adjudicated delinquent for Class A or B felonies be transferred.[8] An investigation and probable cause hearing are required. Further, the court may transfer children 14 years old or older charged with (1) a Class A felony, or (2) "any serious juvenile offense" and previously adjudicated a delinquent for a serious juvenile offense.[9] In the latter case of nonmandatory transfers, the transfer hearing criteria are similar to the second type of waiver in 1978, i.e., probable cause and nonamenability to treatment as juveniles. Additionally, sophistication, maturity, and previous adjudications must suggest the youth would be more appropriately treated in adult facilities. These provisions replaced the waiver statutes in effect in 1978.

CASE LAW SUMMARY

Since 1950, only three cases dealing with waiver issues have been decided by the Connecticut Supreme Court. In State v. Villafane, the Supreme Court held that equal protection had not been denied a youth (over 16 and under 18 years of age) tried in superior court; even though a previous statute had provided that circuit courts could transfer an individual of this age to juvenile court.[10] The youth was charged with murder, an offense under the jurisdiction of superior courts, and therefore there were no grounds for a due process violation since circuit courts were held to have no right or duty to transfer murder cases, this court having no jurisdiction over such cases in Connecticut.

In Washington v. State, the court discussed the intent of the legislature in enacting a transfer statute which provided for the transfer of juveniles 14 years of age or older suspected of murder.[11] The court stated that the only restrictive intent in the statute which was attributable to the legislature was the intent to limit transfers to cases where there is a finding of reasonable cause to believe that children are guilty of committing murder.

Finally, in State v. Anonymous, in which the constitutionality of this same statute was challenged, the court, noting that the statute shows the legislature's recognition of the special problems which arise in the processing and disposition of juveniles charged with murder. The statute was held to be a rationally based scheme and therefore proof against constitutional attack.[12] The court also held that, once transferred, the superior court has exclusive jurisdiction over such a case. The transferred youth lose their juvenile status, including the right of anonymity.

CORRECTIONS INFORMATION

Adult corrections institutions are within the Department of Corrections. Upon adjudication of any individual as a youthful offender, the court may (1) commit the youth to any religious, charitable, or other corrections institution authorized by law to receive adult offenders, (2) impose a fine not exceeding $1,000, (3) suspend sentence, or (4) impose sentence and suspend the execution of the judgment. In the latter two cases, youth may be placed on probation for a period not to exceed five years, and this is the option generally chosen. Courts placing youth on probation may require, as a condition of probation, that the youth submit to periodic tests to determine whether they are using narcotic drugs.

Juvenile facilities are within the Department of Children and Youth Services. Commitment to the Department of Children and Youth Services is for two years, subject to the commissioner's right to discharge at any time.[13] Individuals tried in juvenile courts may be sent to Long Lane School for delinquent boys and girls which, in addition to more open settings, maintains a maximum security wing for more difficult youth. There is no provision for an administrative transfer from there to an adult facility.

Youth tried in adult court may be sent to the Department of Children and Youth Services or to the Department of Corrections, at the trial court judge's discretion. Those transferred youth who are committed to the Department of Children and Youth Services are sent to Long Lane School, from which they may be paroled at the discretion of the commissioner. Those committed to the Department of Corrections by the trial court are sent to the Connecticut Correctional Institution at Cheshire, an institution for inmates 16 to 21 years old. Individuals 16 and 17 years old routinely tried in adult courts are, when incarcerated, almost always placed in the Connecticut Correctional Institute at Cheshire. Otherwise, they are placed in another Department of Corrections facility. There are no provisions to administratively transfer youth to a juvenile facility after trial in adult courts.

The Connecticut legislature, when making statutory changes in 1979, included several corrections options for juvenile courts. First, if the delinquent acts for which children are committed to the Department of Children and Youth Services are serious offenses, the courts may set a period of time, up to six months, during which the department shall place the children out of their town of residence at the commencement of their commitment.[14] Second, the maximum period of indeterminate commitment to the Department of Children and Youth Services for youth adjudged on serious juvenile offenses was extended from two to four years.[15]

The legislature also altered a provision affecting transferred youth in 1979. The legislature specified that a consideration for admission of waived youth to the Department of Children and Youth Services' secure facility "shall be adjudication for a serious juvenile offense."[16]

STATE DATA SUMMARY

In 1978, after a waiver hearing in juvenile court, 14 and 15 year old youth could be transferred to adult courts if charged with murder or if charged with a Class A or B felony and having previously been adjudicated delinquent for violation of a similar felony. Sixteen and 17 year olds, because of the maximum age of juvenile court jurisdiction, are routinely tried in adult courts.

Table 07-1 is a state display of juveniles tried in adult courts. (Connecticut has a unitary state court system, therefore a county breakdown was not available.) In 1978, six youth were judicially transferred, and 11,877 16 and 17 year olds tried due to age of jurisdiction. State sources indicate nearly all arrests of 16 and 17 year olds resulted in court filings.

TABLE 07-1. CONNECTICUT: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY RATE AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver		Age of Jurisdiction	
		Cases	Rate[b]	Cases[c]	Rate[b]
State Total[d]	547,393	6	0.110	11,877	216.974

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

c. Arrest data provided by the Connecticut Uniform Crime Reporting Program, Connecticut Department of Public Safety. State sources estimated that the number of court filings approximates the number of arrests by about 95 percent.

d. Breakdown by county was not available.

Judicial Waiver

This section contains a series of tables and a brief discussion pertaining to the Phase II information on (state) youth judicially waived during 1978. Demographic data on youth judicially transferred in 1978 appear in Table 07-2. All six youth were under 16 years old and all were males. Race data were unavailable.

TABLE 07-2. CONNECTICUT: JUDICIAL WAIVERS TO ADULT COURTS (BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age	Sex		Race		
		0-15	Male	Female	White	Minority	Unknown
State Total[a]	6	6	6	0	*	*	6

* denotes Not Available.

a. Breakdown by county was not available.

Table 07-3 shows the charges against youth judicially transferred to adult courts in 1978. Five youth were transferred for murder; the other offense is unknown. Figure 07-1 graphically depicts this information.

TABLE 07-3. CONNECTICUT: JUDICIAL WAIVERS TO ADULT COURTS (BY TYPES OF OFFENSES) IN 1978

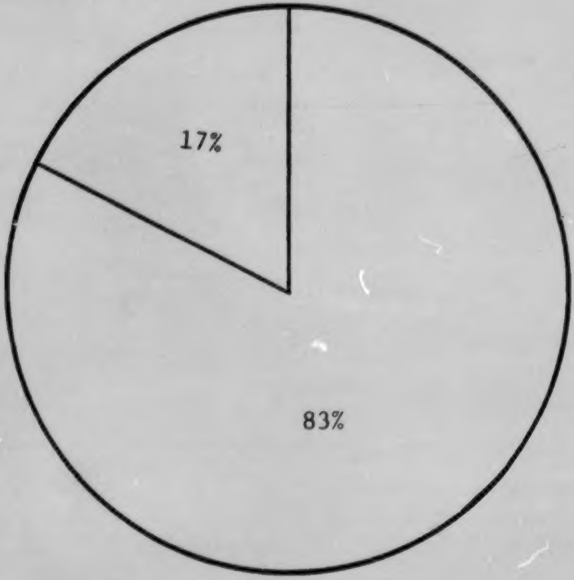
County	Total Waivers	Offenses[a]										
		Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
State Total[b]	6	5	*	*	*	*	*	*	*	*	*	1

* denotes Not Available.

a. Only most serious offense per individual listed.

b. Breakdown by county was not available.

FIGURE 07-1. CONNECTICUT: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS (BY OFFENSE CAGEGORY) IN 1978



Offenses[a]	
Personal	83%
Property	0%
Public Order	0%
Other General	0%
Unknown	17%

N= 6

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 83 percent of all offenses in the state.

Among the six judicial transfers in 1978, five youth were found guilty and one was dismissed, as shown in Table 07-4.

TABLE 07-4. CONNECTICUT: JUDICIAL WAIVERS TO ADULT COURTS (BY JUDGMENTS) IN 1978

		Judgments				
County	Total Waivers	Not Guilty	Dismissed	Youthful Offender Judgments	Guilty	Other
State Total[a]	6	0	1	0	5	0

a. Breakdown by county was not available.

The sentences of youth found guilty appear in Table 07-5. Four of the five youth were incarcerated, with three going to state juvenile corrections and one to a state adult corrections institution. The remaining individual was placed on probation.

TABLE 07-5. CONNECTICUT: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS (BY SENTENCE TYPE) IN 1978

		Sentence Types					
County	Total Convictions	Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other
State Total[a]	5	0	1	0	1	3	0

a. Breakdown by county was not available.

The sentence durations of youth incarcerated are reflected in Table 07-6. One youth received a life sentence and three were given sentences of indefinite length.

TABLE 07-6. CONNECTICUT: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS (BY MAXIMUM SENTENCE) IN 1978

		Sentence Maximums							
County	Total Confinements	One Year or Less	One+ to 3 Year	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death
State Total[a]	4	0	0	0	0	0	3	1	0

a. Breakdown by county was not available.

Lower Age of Criminal Jurisdiction

This section contains a series of tables and a brief discussion pertaining to the Phase II information gathered about youth subject to prosecution in adult courts during 1978 due to age of jurisdiction.

Table 07-7 is a demographic display of youth in adult courts due to age of jurisdiction. All were 16 and 17 years old (individual age totals were not available), and 86 percent (10,192) were male. Race data were unavailable.

TABLE 07-7. CONNECTICUT: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY AGE, SEX, AND RACE) IN 1978

		Age			Sex		Race		
County	Total Arrests	16	17	Unknown	Male	Female	White	Minority	Unknown
State Total[a]	11,877	*	*	11,877	10,192	1,685	*	*	11,877

a. Breakdown by county was not available.

The charges of youth subject to prosecution in adult court due to age of jurisdiction in 1978 are shown in Table 07-8. Public order offenses (including drug and liquor violations) and other property offenses (including larceny and auto theft) are the two largest categories of offenses, with 30 percent (3,543) and 28 percent (3,317) of the totals, respectively. Burglary is the largest single offense category at 12 percent (1,396). Other general offenses--19 percent (2,211)--included runaways, curfew, loitering, offenses against the family, and violations of criminal ordinances.

Figure 07-2 is a graphic display of charges by offense categories. All property offenses represented the largest category with 40 percent. Next are public order offenses at 30 percent. Personal offenses represented only 12 percent of the total number of charges.

A more exhaustive breakdown of offenses is listed in Table 07-9. Larceny was the largest single category and represented over 57 percent of all property offenses and 23 percent of all offenses. Violent offenses represented 67 percent of all personal offenses and eight percent of all offenses. The "other general" category is specific to Connecticut and may vary from the offenses included in this category in other states.

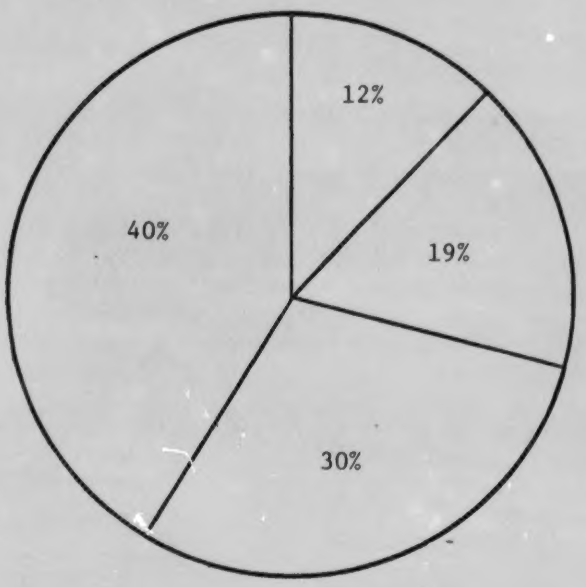
In Connecticut, individuals 16 and 17 years old can be tried as "youthful offenders" (see Transfer Process section). In fiscal 1978, 94 youth were convicted under the youthful offender statute; 89 of these were male. These youth are reflected in the data already discussed regarding youth in adult courts due to age of jurisdiction.

TABLE 07-8. CONNECTICUT: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY TYPES OF OFFENSES) IN 1978

		Offenses[a]									
County	Total Arrests	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
State Total[a]	11,877	6	10	273	191	658	272	1,396	3,317	3,543	2,211

a. Breakdown by county was not available.

FIGURE 07-2. CONNECTICUT: PERCENTAGE OF YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE CATEGORY) IN 1978



Offenses[a]	
Personal	12%
Property	40%
Public Order	30%
Other General	19%

N= 11,877

[a] Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent eight percent of all offenses in the state for which 16 and 17 year olds were arrested.

TABLE 07-9. CONNECTICUT: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE TYPE AND FREQUENCY) IN 1978

Types of Offenses	Violent Offense Subtotals	Offense Category Subtotals	Totals
PERSONAL OFFENSES			1,410
Violent Offfenses		947	
Murder	4		
Manslaughter	2		
Rape	10		
Robbery	273		
Aggravated Assault	658		
Arson		39	
Kidnapping		191	
Assault/Battery		233	
Other Personal			
PROPERTY OFFENSES			4,713
Burglary		1,396	
Larceny		2,696	
Auto Theft		436	
Trespassing		185	
Other Property			
PUBLIC ORDER OFFENSES			3,543
Drug Violations		917	
Liquor Violations		221	
Other Public Order		2,405	
OTHER GENERAL OFFENSES			2,211
Status Offenses[a]		190	
Offenses Against the Family		25	
Other General[b]		1,996	
UNKNOWN			0
TOTAL OFFENSES			11,877

---

[a] According to the Connecticut Uniform Crime Reporting Program, Connecticut Department of Public Safety. These arrests may have been made for status offenses occurring before the youth attained majority or for offenses so designated which do apply to adults.

[b] According to state sources, this category includes all other offenses, the ones primarily represented being: violation of municipal criminal ordinances, abduction, bigamy, kidnapping, perjury, contempt of court, distribution of obscene literature, and contributing to the delinquency of a minor. The offenses included in this category are specific to Connecticut and may vary slightly from the offenses included in this category in other states and in the appendix.

Table 07-10 provides a summary of the number of cases reported in the preceding tables concerning total referrals to adult courts; the number selected for Phase II investigation; and finding concerning conviction and confinement practices applicable to these youth. There were six youth judicially transferred to adult court in 1978, five of which were convicted, four receiving sentences of confinement. Due to the lower age of jurisdiction in Connecticut, 11,877 youth 16 or 17 years old were arrested and subject to prosecution in adult court in 1978. Conviction and sentence data were not available for these youth.

TABLE 07-10. CONNECTICUT: SUMMARY OF TABLES
(BY LEGAL MECHANISM)

	Judicial Waiver	Age of Jurisdiction[a]
Total Referrals to Adult Courts in 1978 (Table 07-1)	6	11,877
Total Referrals Selected for Phase II (Tables 07-2, and 07-7)	6	11,877
Total Referrals Resulting in Convictions (Table 07-5)	5	*
Total Convictions Resulting in Sentences of Confinement (Table 07-6)	4	*

* denotes Not Available.

a. Arrest data provided by the Connecticut Uniform Crime Report Program, Connecticut Department of Public Safety. State sources estimated that the number of court filings approximate the number of arrests by about 95 percent.

In summary, the six juveniles judicially transferred were under 16 years old and males. Five youth were charged with murder and found guilty. Four of the five convicted were incarcerated; one received a life sentence, and the three others received sentences of indefinite duration.

Youth in adult courts due to age of jurisdiction were 16 or 17 years old and male. Most were charged with property offenses. Disposition and sentencing data were unavailable.

FOOTNOTES

1. Connecticut General Statutes Annotated, Section 51-301.
2. Connecticut General Statutes Annotated, Section 51-307.
3. Connecticut General Statutes Annotated, Section 51-307.
4. Connecticut General Statutes Annotated, Section 51-308.
5. Connecticut General Statutes Annotated, Sections 54-76b through 54-76p.
6. Public Act No. 78-17,54-76j.
7. The most relevant sections are now numbered 46b-120 through 46b-128.
8. Connecticut General Statutes Annotated, Section 46b-127.
9. Connecticut General Statutes Annotated, Section 46b-126.
10. State v. Villafane, 372 A.2d 82, cert. den. 97 S. Ct. 1137; 171 Conn. 644 (1977), Connecticut General Statutes Annotated, Section 54-1a (repealed in 1971).
11. Washington v. States, 372 A.2d 106, 171 Conn. 683 (1977); Connecticut General Statutes Annotated, Section 51-307.
12. State v. Anonymous, 173 Conn. 414; 378 A.2d 52[illegible] (1977).
13. Connecticut General Statutes Annotated, Sections 51-321 and 51-322.
14. Connecticut General Statutes Annotated, Section 46-b140(e)(1).
15. Connecticut General Statutes Annotated, Section 46b-141(a).
16. Connecticut General Statutes Annotated, Section 46b-126(b).

DELAWARE PROFILE

ACKNOWLEDGMENTS

The Academy thanks the many prosecutors and family court staff for their assistance in furnishing the necessary data. Special appreciation is owed to Pat Hurley, Ocie Lindh, and Wilma McDowell for their help in New Castle County and to Joe Duffy, Delaware Criminal Justice Planning Commission, for reviewing the Delaware profile. In addition, appreciation is expressed to the many other state and local officials who participated in the survey.

METHODOLOGY

All of the data regarding the referral of youth to adult courts in Delaware were gathered through telephone interviews conducted by Academy staff. Three types of Phase I frequency data were sought:

(1) Judicial waivers from juvenile to adult courts.

(2) The number of youth excluded from the jurisdiction of juvenile courts because they were charged with certain serious offenses.

(3) The number of youth excluded from the jurisdiction of juvenile courts because they were charged with non-serious traffic offenses.

Additionally, the small number of counties in Delaware allowed an attempt to gather Phase II data on age, sex, race, offenses, dispositions, and sentences of youth referred to adult courts through the first two legal mechanisms named above from all counties. The number of excluded offense referrals and Phase II data for both mechanisms were not available from New Castle County. Further, Phase II data were not available from any other county concerning youth referred to adult courts due to involvement in serious offenses excluded from juvenile court jurisdiction. Also not available was frequency data (Phase I) or juvenile traffic cases which were heard in adult courts.

COURT ORGANIZATION

The highest courts of general jurisdiction in Delaware are the superior courts. The superior courts operate in three locations (there are only three counties in Delaware) and have original jurisdiction over criminal and civil cases. In addition, exclusive jurisdiction over felonies and most drug offenses is exercised by the superior courts.

Delaware has several lesser courts of general or limited jurisdiction. The court of common pleas, also existing in three locations, have concurrent jurisdiction with superior courts in civil actions involving less than $2,500. The criminal jurisdiction of common pleas courts varies among the three counties, but they each have jurisdiction of all misdemeanors, except drug-related offenses.

The 13 justice of the peace courts have jurisdiction over civil cases involving claims which do not exceed $1,500. Justice courts also exercise some criminal jurisdiction, that is, minor misdemeanors and non-felony traffic cases. Additionally, the eight alderman courts have jurisdiction over violations of municipal ordinances. The City of Wilmington has created a municipal court which functions like an alderman court, but has more extensive jurisdiction. This municipal court has criminal jurisdiction over traffic, misdemeanors and municipal ordinances concurrent with the other lesser courts.

Juvenile jurisdiction in Delaware is exercised by the family court, which also exists in three locations. The family court is a separate state court of limited jurisdiction. Functioning as juvenile courts, the family courts hear all cases involving juveniles including dependency, neglect, and delinquency.

Traffic offenses (non-felony) involving juveniles are under the jurisdiction of several adult courts. Non-felony juvenile traffic offenders are routinely tried in justice of the peace courts, the Wilmington Municipal Court, alderman courts, and courts of common pleas.

An overview of Delaware's courts by their jurisdiction over juveniles appears below:

DELAWARE: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic[a]
Family Courts	Superior Court Court of Common Pleas Justice of the Peace Courts Alderman Courts Wilmington Municipal Court	Alderman Courts Justice of the Peace Courts Wilmington Municipal Court Court of Common Pleas

a. Juveniles 16 years of age or older.

TRANSFER PROCESS

The initial age of juvenile court jurisdiction in Delaware extends to 18 years of age.[1] There are two legal mechanisms by which juveniles are referred to adult courts--judicial waivers and excluded offenses.

Judicial Waivers

Delaware law contains two provisions which are applicable to judicial waivers. First, upon motion of the attorney general or of the court, the jurisdiction of the family court may be judicially waived if the juvenile is 16 years of age or older, regardless of the offense.[2] Second, if a juvenile of any age is charged with second degree murder, manslaughter, first or second degree robbery, attempted murder, first or second degree, burglary, first degree, and arson, first degree, the family court must hold a hearing to determine amenability to treatment in the juvenile system.[3] In addition, the family court is required to hold a hearing on any juvenile 14 years of age or older, who has previously received a determinate sentence to the Department of Corrections because of repeated offenses against persons, burglary or robbery, and during a period of escape or unauthorized absence, he is alleged to have committed a felony offense against persons or property.[4]

The family court, in deciding the issue of amenability, considers at least six factors:[5]

(1) Whether, in view of the age and personal characteristics of the juvenile, the people may best be protected and the juvenile may best be made a useful member of society by some form of corrections treatment not available through family court.

(2) Whether the juvenile inflicted serious injury or death during the offense.

(3) Previous offenses.

(4) Former corrections treatment by family court.

(5) The use of a weapon during the offense.

(6) Whether other participants in the same offense are being charged.

If the family court decides that a youth is not amenable to treatment in the juvenile justice system, the judge is required to refer the youth to "the superior court or to any other court having jurisdiction over the offense for trial as an adult."[6] A juvenile who has been transferred to the superior court to be tried as an adult and is charged with a subsequent offense must be tried as an adult in superior court or any other court having jurisdiction over adult offenses.

EXCLUDED OFFENSES

First degree murder, rape, and kidnapping are excluded offenses which begin in adult courts with no minimum age specified.[7] Delaware law does, however, contain a provision for reverse or back waiver. Upon application of the defendant in any case where the superior court has original jurisdiction over a child, the court may transfer the child to the family court for trial and disposition if, in the opinion of the court, the interests of justice would be best served by the transfer. Before ordering the transfer, the superior court may hold a hearing at which time it considers:

(1) The nature of the present offense and the extent and nature of the defendant's prior record.

(2) The nature of past treatment and rehabilitative efforts and the nature of the defendant's response.

(3) Whether the interests of society and the defendants would be best served by trial in the family court or in the superior court.[8]

Juveniles 16 years of age or older who have been charged with certain lesser traffic offenses are also initially excluded from juvenile court jurisdiction.[9] However, there is an extensive list of traffic offenses over which the family court has exclusive jurisdiction.

CASE LAW SUMMARY

Only two cases have reached the Delaware Supreme Court since 1950 involving waiver or transfer. Farrow v. State established that a child is over the age of 16 years, for the purposes of the statute, once he has passed his 16th birthday. He need not have attained his 17th birthday.[10]

In State v. J. K., the court indicated that the public policy of the state in dealing with minors charged with violations of law is to divide them into two classes on the basis of the offense charged. Those charged with first degree murder, rape, kidnapping, or certain motor vehicle offenses are, in effect, prosecuted as adults. Those charged with other offenses are proceeded against civilly in family court. The family court's duty is to proceed in the best interests of the child, then his family and the general public, unless there is a determination reached of unfitness for juveniles treatment.[11]

CORRECTIONS INFORMATION

The Delaware Department of Correction is divided into the Bureau of Adult Correction and the Bureau of Juvenile Correction. These bureaus have jurisdiction over the respective correction institutions.

If incarceration is ordered after trial in juvenile court, a juvenile is committed to the custody of the Department of Correction.[12] Confinement will be in either Ferris School for Boys or Woods Haven-Kruse School for Girls. These are minimum security juvenile facilities with an open campus setting. Particularly troublesome juveniles at Ferris are segregated in a maximum security unit.

Youth below the age of 18 who are convicted in the adult courts and sentenced to incarceration are also sent to Ferris or Woods Haven-Kruse. While assigned to the Ferris School, a youth committed by an adult court is placed in the maximum security unit until his 18th or 19th birthday, at which time he is transferred to the direct supervision of the Bureau of Adult Corrections.[13] There are currently no procedures to administratively transfer a juvenile to an adult institution, and there are no provisions to administratively transfer the youth from an adult institution to a juvenile facility.

STATE DATA SUMMARY

There are two basic mechanisms through which a juvenile in Delaware can be transferred to adult court. The first mechanism is judicial waiver. In certain cases, the court must hold a hearing to determine the amenability of the youth to treatment in the juvenile system. The second mechanism is excluded offenses. Juveniles charged with first degree murder, rape, or kidnapping are sent originally to adult court, as well as those juveniles involved in non-serious traffic offenses.

Table 08-1 displays the information gathered about the number of juveniles referred to adult courts in 1978 by county and type of legal mechanism. The Table reveals that a total of 17 youth were judicially waived in 1978 with the highest number (7) reported in New Castle County. The data given about excluded offense referrals does not include traffic offenders nor the number of youth referred from New Castle County. Only a total of four youth were referred to adult courts in 1978 due to excluded offenses.

TABLE 08-1. DELAWARE: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver		Excluded Offenses[b]	
		Cases	Rate[c]	Cases	Rate[c]
Kent	17,797	6	3.371	3	1.686
New Castle	73,142	7	0.957	*	*
Sussex	16,476	4	2.428	1	0.607
Total	107,415	17	1.583	4	0.372

* denotes Not Available.

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Data do not include routinely handled traffic cases which are also excluded from juvenile court jurisdiction.

c. Rate per 10,000 juveniles eight to 17 years old (1978).

Further information (i.e., Phase II) regarding the number of transfers was requested in all counties in Delaware in order to obtain more detailed data. The Phase II judicial waiver data covers 100 percent of the transferred cases and represents 100 percent of the total state juvenile population. However, Phase II data were not available for the four excluded offense cases as mentioned previously. The following tables are therefore limited to the judicial waiver cases only.

Judicial Waiver

This section contains a series of tables and a brief discussion pertaining to the Phase II information on Delaware youth judicially waived in 1978.

Table 08-2 gives a demographic breakdown--age, sex, race--of the juveniles judicially waived in Delaware in 1978. Six of the ten where the age is known were 17 years old; one was under 16. All of those waived were males. Of those

TABLE 08-2. DELAWARE: JUDICIAL WAIVERS TO ADULT COURTS (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age					Sex		Race		
		0-15	16	17	18+	Un-known	Male	Female	White	Minor-ity	Un-known
Kent	6	1	2	3	0	0	6	0	4	2	0
Castle	7	*	*	*	*	7	7	0	*	*	7
Sussex	4	0	1	3	0	0	4	0	1	3	0
State Total	17	1	3	6	0	7	17	0	5	5	7

* denotes Not Available.

DE-7

for whom race data were provided, white and minority youth were evenly represented, at 50 percent each.

The offenses committed by the 17 youth who were judicially waived are presented in Table 08-3. Of the 15 known offenses, seven (47 percent) were property offenses (all burglary). Eight (53 percent) were personal offenses (murder, manslaughter, rape, robbery, aggravated assault, and other personal). The offenses of two cases were unknown. A graphic representation of these findings on offenses is given in Figure 08-1.

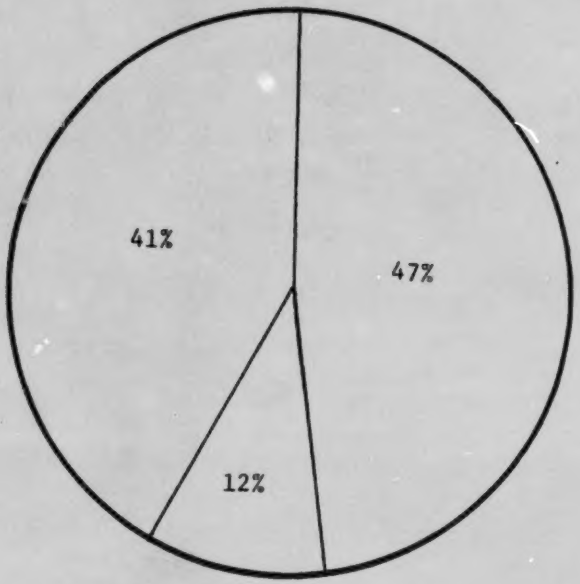
TABLE 08-3. DELAWARE: JUDICIAL WAIVERS TO ADULT COURTS
(BY COUNTY AND BY TYPE OF OFFENSE) IN 1978

		Offenses[a]										
County	Total Waivers	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Kent	6	2	1	0	0	0	1	2	0	0	0	0
New Castle	7	*	*	1	*	1	1	2	*	*	*	2
Sussex	4	0	0	1	0	0	0	3	0	0	0	0
State Total	17	2	1	2	0	1	2	7	0	0	0	2

* denotes Not Available.

a. Only most serious offense per individual listed.

FIGURE 08-1. DELAWARE: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS (BY OFFENSE CATEGORY) IN 1978



Offenses[a]

Personal	47%
Property	41%
Public Order	0%
Other General	0%
Unknown	12%

N= 17

---

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 35 percent of all offenses in the state.

Table 08-4 shows the judgments for the juveniles waived to adult courts. The two cases listed in the "other" category were continued or held open.

Nine of the 15 known dispositions (69 percent) were findings of guilty. None were found to be not guilty. Two cases (15 percent) were dismissed and another two cases were referred back to juvenile court.

TABLE 08-4. DELAWARE: JUDICIAL WAIVERS TO ADULT COURTS (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

		Judgments					
County	Total Waivers	Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other[a]	Unknown
Kent	6	0	1	2	2	1	0
New Castle	7	*	1	*	3	1	2
Sussex	4	0	0	0	4	0	0
State Total	17	0	2	2	9	2	2

* denotes Not Available.

a. Primarily cases held open or pending.

Table 08-5 shows the sentences imposed upon the nine youth found guilty. Five youth (56 percent) were incarcerated. When grouped according to county--two from New Castle Counny were sent to jail, and one from Sussex County was sent to a state juvenile corrections institution. One-third (three) were placed on probation; all from Sussex County. The remaining one was fined. The two youth sent to adult corrections facilities from Kent County represent an anomoly in the data, since no such sentencing provision exists in Delaware. It is conceivable that both youth were 18 at the time of sentencing.

Table 08-6 reflects the sentence duration of youth sentenced to incarceration. All but one (80 percent) received sentences with terms of one to three years. The other received a maximum sentence of three to five years.

TABLE 08-5. DELAWARE: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS (BY COUNTY AND SENTENCE TYPE) IN 1978

County	Total Convictions	Sentence Types					
		Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other
Kent	2	0	0	0	2	0	0
New Castle	3	1	0	2	0	0	0
Sussex	4	0	3	0	0	1	0
State Total	9	1	3	2	2	1	0

TABLE 08-6. DELAWARE: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

County	Total Confinements	Sentence Maximums							
		One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death
Kent	2	0	2	0	0	0	0	0	0
New Castle	2	0	1	1	0	0	0	0	0
Sussex	1	0	1 est	0	0	0	0	0	0
State Total	5	0	4	1	0	0	0	0	0

Table 08-7 provides a summary of the number of cases reported in the preceeding tables concerning total referrals to adult courts, the number selected for Phase II investigation, and findings on conviction and confinement practices applicable to these youth. In total, 17 juveniles were referred to adult courts in 1978 through judicial waivers and four were referred for excluded offenses. Only the judicial waivers were investigated further under Phase II data collection procedures, but all 17 cases were reported upon. Nine youth were convicted and five were sentenced to confinement.

TABLE 08-7. DELAWARE: SUMMARY OF TABLES (BY LEGAL MECHANISM)

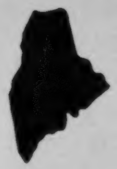
	Judicial Waiver	Excluded Offenses
Total Referrals to Adult Courts in 1978 (Table 08-1)	17	4
Total Referrals Selected for Phase II (Table 08-2)	17	*
Total Referrals Resulting in Convictions (Table 08-5)	9	*
Total Convictions Resulting in Sentences of Confinement (Table 08-6)	5	*

* denotes Not Available.

In summary, all juveniles judicially waived in 1978 were males. Minority and white youth were equally represented. There were four times more cases of judicial waiver than for transfer through excluded offenses, however, New Castle County did not report its excluded offense cases. Nearly one-half of the youth judicially waived were charged with burglary, and over one-half were charged with personal offenses. Of the individuals judicially waived who were found guilty, 56 percent were incarcerated and one-third were given probation. Of those incarcerated, four-fifths received maximum sentences of one to three years; one-fifth received a maximum sentence of three to five years.

FOOTNOTES

1. Delaware Code Annotated, Title 10, Section 901(3) and (7).
2. Delaware Code Annotated, Title 10, Section 938(c).
3. Delaware Code Annotated, Title 10, Section 921(2)(b).
4. Delaware Code Annotated, Title 10, Section 937(c)(5).
5. Delaware Code Annotated, Title 10, Section 938(c).
6. Delaware Code Annotated, Title 10, Section 938(c).
7. Delaware Code Annotated, Title 10, Section 921(2)(a).
8. Delaware Code Annotated, Title 10, Section 939.
9. Delaware Code Annotated, Title 10, Section 927.
10. Farrow v. State, 258 A.2d 277 (1969).
11. State v. J.K., 383 A.2d 283 (1977).
12. Delaware Code Annotated, Title 10, Section 5107.
13. Delaware Code Annotated, Title 10, Section 5108.



MAINE PROFILE

ACKNOWLEDGMENTS

The Academy thanks the staff of the district courts and the district attorneys' offices for providing data on juveniles bound over for trial in superior courts. Ellerbe P. Cole, Planning Supervisor, Maine Criminal Justice Planning Agency was also most helpful in reviewing the Maine profile. In addition, appreciation is expressed to the many other state and local officials who participated in the survey.

METHODOLOGY

The data on judicial bindovers were gathered through telephone interviews conducted by the Academy staff with the county prosecutors' offices in Maine. In addition, information on juveniles referred to adult courts for motor vehicle, snowmobile, and watercraft violations was requested from the clerks of district courts. These additional data were not available.

Frequencies of judicial bindover (Phase I data) were sought from all 16 counties in Maine. Age, sex, race, offenses, dispositions, sentence types, and sentence durations (Phase II data) were requested from seven counties (the most populous ten percent of the counties) and counties with five or more judicial bindovers of juveniles in fiscal year 1978.

COURT ORGANIZATION

The highest court of general jurisdiction in Maine is the superior court. A superior court exists in each of the state's 16 counties and exercises exclusive jurisdiction over serious crime (felonies).

The state's 31 district courts have original jurisdiction over non-serious crime (misdemeanors), and motor vehicle, snowmobile, and watercraft violations. In addition, the juvenile sessions of the district courts have exclusive original jurisdiction over juvenile matters. Hereafter, the juvenile sessions of district courts will be referred to as juvenile courts.

Juveniles accused of motor vehicle, snowmobile, and watercraft violations are handled routinely in traffic sessions of district courts.

An overview of Maine's courts by their jurisdiction over juveniles in 1978 appears below.

MAINE: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic[a]
Juvenile Sessions of District Courts	Superior Courts	Traffic Sessions of District Courts

a. Includes motor vehicle, snowmobile, and watercraft violations.

TRANSFER PROCESS

The initial age of juvenile court jurisdiction in Maine extends to 18 years of age.[1] During 1978, there were two legal mechanisms through which juveniles were referred to adult courts--judicial waiver and excluded offenses.

Judicial Waiver

Juveniles under 18 years of age, charged with murder (termed criminal homicide under the previous statute) or a Class A, B, or C crime may be judicially bound over to adult courts following a "bind-over hearing" in juvenile court.

In determining the amenability of the youth to treatment, the juvenile court must consider several factors:

(1) The record and previous history of the juvenile; and

(2) Whether the offense was committed in an aggressive, violent, premeditated, or willful manner, greater weight being given to offenses against the person than against property; and

(3) Whether the juvenile's emotional attitude and pattern of living indicate that it is unlikely that future criminal conduct will be deterred by the dispositional alternatives available to the juvenile court.

The court must make written findings to support the bindover before waiving jurisdiction and certifying the case for proceedings before the grand jury.

After considering the above factors, the court must find that there is probable cause to believe that the crime has been committed, that the juvenile would be more appropriately prosecuted as if he were an adult, and that the protection of the community would be served by the transfer of the case. The bindover process can be initiated only by the prosecuting attorney in the juvenile court.[2] Once waived to adult court, there is no statutory authority for the youth to be transferred back to juvenile court.

Excluded Offenses

Juveniles charged with motor vehicle, watercraft, and snowmobile violations are excluded from the jurisdiction of juvenile courts. Therefore, adult courts in Maine routinely handle youth who have been charged with these excluded offenses.

The law does, however, provide for an exception to this provision. When juveniles have been charged with driving under the influence of intoxicating liquor or drugs, juvenile courts maintain jurisdiction.

CASE LAW SUMMARY

Since 1950, the Supreme Judicial Court of Maine (the court of last resort) has, on several occasions, resolved issues concerning the proper scope of juvenile court jurisdiction. In 1950, the court held, in *Wade* v. *Warden of State Prison*, that manslaughter was not excluded from the original, exclusive juvenile jurisdiction of juvenile court.[3] The statutory provision then in effect excluded "a crime the punishment for which may be imprisonment for life or for *any term of years*, committed by children under the age of 17 years," from juvenile court jurisdiction (emphases supplied).[4] The court, after a thorough examination of relevant statutory provisions and common law precedents, concluded that manslaughter was not an excluded offense. In 1975, the court held in State v. W.L., Jr. that juvenile court had jurisdiction over an individual who was over the age of 18 years when the individual was under 18 at the time of the commission of the offense.[5]

In State v. Knowles, the court held that where a statute provided that a defendant could appeal a bindover order by filing a petition within ten days after the entry of such an order, any grand jury indictment returned during this time period was null and void and did not affect the validity of the bindover order.[6] Eight months later, in State v. Corliss, the court held that once a juvenile court adjudicates a delinquent, commits him or her to the Department of Human Services and the juvenile begins to serve the commitment term, the jurisdiction of juvenile court terminates.[7] Thus, any subsequent order by juvenile court which purports to bindover this same individual for trial as an adult, fails to vest the adult criminal court with jurisdiction over the matter. In addition, the court stated that the bindover statute was not, on its face, unconstitutional in light of Breed v. Jones.[8] Finally, in State v Alley, the Supreme Judicial Court of Maine refused to hold the bindover statute unconstitutionally vague or overbroad.[9] The court also held that a bindover order is not appealable where the only challenge is to the sufficiency of the evidence supporting such an order.

CORRECTIONS INFORMATION

The Department of Mental Health and Corrections administers the state juvenile and adult corrections systems. The Maine Correctional Center houses waived youth, men over the age of 18 with sentences of less than five years, and women over the age of 18. Youth tried as adults may not be placed at or transferred to the Maine Youth Center, which is used for juveniles 11 through 17 years of age.[10]

Juveniles at the Maine Youth Center may not be placed in or transferred to any adult penal institution.[11]

STATE DATA SUMMARY

Judicial waiver and excluded offenses are the two legal mechanisms by which juveniles could be referred to adult courts in Maine during 1978. After a hearing in juvenile court, juveniles charged with murder or Class A, B, or C crime and found to be "dangerous persons and a menace to the safety of the community," may be judicially waived to adult courts. Additionally, juveniles charged with motor vehicle, snowmobile, and watercraft violations are excluded from the jurisdiction of juvenile courts and are routinely handled in adult courts. Data on juveniles referred to adult courts due to excluded offenses was not available. Therefore, only the survey results on judicial waivers are summarized in the following discussion and tabular display.

Table 20-1 displays findings on the number of judicial waivers reported during 1978 by county. The table also indicates the youth population in each county as well as the per capita waiver rate to facilitate further judgments about Maine's judicial waiver practices. In total, 74 youth were judicially waived to adult courts in 1978. The highest number of waivers were reported in Aroostook County with 30 such transfers. The table also reveals that officials in Lincoln County reported 12 waivers which equalled the highest rate of waiver totaling 29.91 per 10,000 juveniles eight to 17 years old.

TABLE 20-1. MAINE: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases	Rate[b]
Androscoggin	17,326	3 est	1.732
Aroostook	19,932	30	15.051
Cumberland	37,267	8	2.147
Franklin	4,652	2 est	4.299
Hancock	6,454	0	0.000
Kennebec	18,025	3	1.644
Knox	5,241	4 est	7.632
Lincoln	4,012	12	29.910
Oxford	8,677	4	4.610
Penobscot	23,748	5	2.105

TABLE 20-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases	Judicial Waiver Rate[b]
Piscataquis	2,795	0	0.000
Sagadahoc	4,912	1	2.036
Somerset	8,391	0	0.000
Waldo	4,631	1	2.159
Washington	5,699	0	0.000
York	22,217	1	0.450
Total	193,979	74 est	3.815

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

Table 20-2 reflects the relationship between the state and Phase II counties. In Maine, two counties were Phase II due to population size and four counties reported five or more waivers (two counties fit both criteria). Data were available from three additional counties and are included as Phase II counties. The seven counties contained 60 percent of the state juvenile population and accounted for 85 percent of the waivers.

TABLE 11-2. MAINE: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17)[a]	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	193,979	16	74
Selected for Phase II Investigation	116,292	7	63
Percentage of State Selected for Phase II Investigation	60%	44%	85%

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

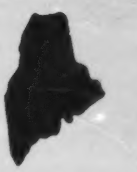


Table 20-3 gives a demographic breakdown--age, sex, race--of the 63 juveniles judicially waived in the Phase II counties. Of these, 15 (24 percent) were age 15 or under. Thirty (48 percent) were ages 16 or 17, and 18 (29 percent) were over 17 at the time of the transfer. Juveniles committing crimes before their 18th birthday but not arrested until after their 18th birthday are handled as juveniles. Forty-seven (75 percent) of those bound over were males and 62 (98 percent) were white youth. Only one was a minority youth.

TABLE 20-3. MAINE: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age				Sex		Race	
		0-15	16	17	18+	Male	Female	White	Minority
Aroostook	30	3	2	7	18	18	12	30	0
Cumberland	8	2	4	2	0	7	1	7	1
Kennebec	3	2	0	1	0	0	3	3	0
Lincoln	12	7	2	3	0	12	0	12	0
Oxford	4	0	2	2	0	4	0	4	0
Penobscot	5	0	1	4	0	5 est	0	5	0
Waldo	1	1	0	0	0	1	0	1	0
State Phase II Total	63	15	11	19	18	47	16	62	1

Table 20-4 shows the distribution of judicial waivers by categories of offense. Where data were known, 12 (35 percent) were for offenses against the person (murder, robbery, assaults, and other personal offenses), 19 (56 percent) were for burglary and other property offenses. "Other personal" offenses included sexual assault and criminal threatening. The four under the "other property" category were larcenies. Public order offenses (criminal mischief) represented nine percent (three) of the known charges. A graphic summarization of these findings is illustrated in Figure 20-1.

TABLE 11-4. MAINE: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

		Offenses[a]										
County	Total Waivers	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Aroostook	30	*	*	2	*	*	*	7	*	*	*	21
Cumberland	8	*	*	*	*	*	*	*	*	*	*	8
Kennebec	3	0	0	0	0	3	0	0	0	0	0	0
Lincoln	12	0	0	0	0	0	0	5	4	3	0	0
Oxford	4	0	0	2	0	0	1	1	0	0	0	0
Penobscot	5	0	0	2	0	0	1	2 est	0	0	0	0
Waldo	1	1	0	0	0	0	0	0	0	0	0	0
State Phase II Total	63	1	0	6	0	3	2	15	4	3	0	29

* denotes Not Available.

a. Only most serious offense per individual listed.

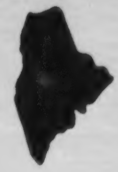
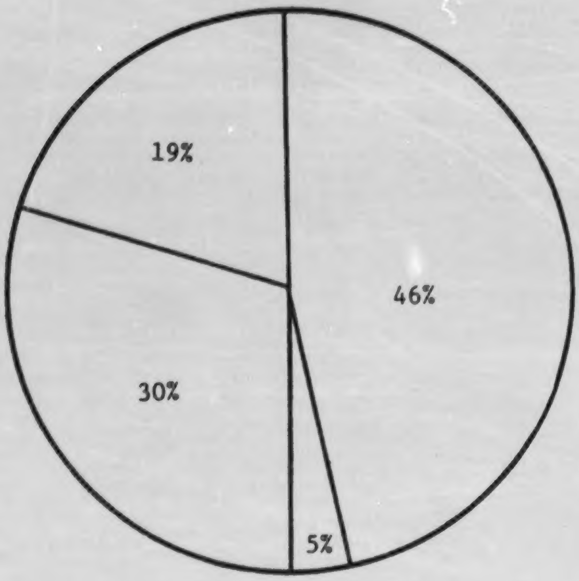


FIGURE 20-1. MAINE: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses[a]

Personal	19%
Property	30%
Public Order	5%
Other General	0%
Unknown	46%

N= 63

a. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent 29 percent of all offenses in the Phase II counties.

Table 20-5 displays information on the judgments reached in adult courts for the 63 youth who were judicially waived during 1978. The table reveals that 28 of the 41 known judgments (66 percent) were findings of guilty. Only two youth were found not guilty, but another 10 cases were dismissed. The 17 cases in the "other" category represent 13 cases which were held open or continued and 4 cases involving suspended sentences.

Table 20-5 also indicates that one youth was referred back to juvenile court. This finding is of special interest because Maine statutes do not state such a transfer of jurisdiction.

TABLE 20-5. MAINE: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

		Judgments					
County	Total Waivers	Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other[a]	Unknown
Aroostook	30	1	4	1	15	8	1
Cumberland	8	1	1	*	3	2	1
Kennebec	3	0	3	0	0	0	0
Lincoln	12	0	2	0	3	7	0
Oxford	4	0	0	0	4	0	0
Penobscot	5	*	*	*	2	*	3
Waldo	1	0	0	0	1	0	0
State Phase II Total	63	2	10	1	28	17	5

* denotes Not Available.

[a] Thirteen cases were held open or continued and four were suspended sentences.

Table 20-6 presents the findings on the types of sentences received by the 28 youth found guilty in adult courts. Of the 13 known sentences, seven (54 percent) were sentenced to confinement in adult corrections facilities. Two youth were confined in jails and two were placed on probation. One youth was reported to have been confined in a state juvenile corrections facility. State sources indicate that youth tried as adults cannot be sentenced to juvenile correctional facilities. Evidently, exceptions to statutorily proscribed policy can occur in Maine under special circumstances.

TABLE 20-6. MAINE: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND SENTENCE TYPE) IN 1978

		Sentence Types						
County	Total Convictions	Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other	Unknown
Aroostook	15	*	*	*	*	*	*	15
Cumberland	3	0	0	1	2	0	0	0
Lincoln	3	0	2	0	0	1	0	0
Oxford	4	0	0	0	3	0	1	0
Penobscot	2	0	0	1	1	0	0	0
Waldo	1	0	0	0	1	0	0	0
State Phase II Total	28	0	2	2	7	1	1	15

* denotes Not Available.

Table 20-7 reflects the sentence length of those youth incarcerated in either jails, juvenile corrections, or adult corrections. Of the four known sentence lengths, one received a sentence of less than one year and three received maximum sentences of up to three years.

TABLE 20-7. MAINE: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

		Sentence Maximums								
County	Total Confinements	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Cumberland	3	*	*	*	*	*	*	*	*	3
Lincoln	1	1	0	0	0	0	0	0	0	0
Oxford	3	0	3	0	0	0	0	0	0	0
Penobscot	2	*	*	*	*	*	*	*	*	2
Waldo	1	*	*	*	*	*	*	*	*	1
State Phase II Total	10	1	3	0	0	0	0	0	0	6

* denotes Not Available.

Table 20-8 provides a summary of the number of cases reported in the preceding tables concerning total referrals to adult courts; the number selected for Phase II investigation; and findings concerning conviction and confinement practices applicable to these youth. A review of Table 20-8 reveals that in total 74 youth were judicially waived during 1978. Sixty-three of those cases were then selected for further study under Phase II data collection procedures. Of the 63 youth in the Phase II sample, a total of 28 were convicted and 10 of those convicted youth were sentenced to confinement.

TABLE 20-8. MAINE: SUMMARY OF TABLES
(BY LEGAL MECHANISM)

	Judicial Waiver
Total Referrals to Adult Courts in 1978 (Table 20-1)	74
Total Referrals Selected for Phase II (Tables 20-2 and 20-3)	63
Total Referrals Resulting in Convictions (Table 20-5)	28
Total Convictions Resulting in Sentences of Confinement (Table 20-6)	10

FOOTNOTES

1. Maine Revised Statutes Annotated, Title 15, Section 3101(2)(D).
2. Maine Revised Statutes Annotated, Juvenile Code, Chapter 503 Section 3101(4). Standards and factors governing bindover decisions were clarified in amendments, effective July 3, 1980, contained in Chapter 681, Sections 3-5, Public Laws of 1979.
3. Wade v. Warden of State Prison, 73 A.2d 128; 155 Me. 24 (1950).
4. R.S. 1944, C. 133, Section 2; see also State v. Trask, 151 A.2d 280; 155 Me. 24 (1959).
5. State v. W.L., Jr., 347 A.2d 588 (1975).
6. State v. Knowles, 371 A.2d 624 (1977).
7. State v. Corliss, 379 A.2d 998 (1977).
8. Breed v. Jones, 421 U.S. 519, 95 S. Ct. 1779 (1975).
9. State v. Alley, 385 A.2d 1175 (1978).
10. Maine Revised Statutes Annotated, Title 15, Section 2714.
11. Maine Revised Statutes Annotated, Title 15, Section 3101(4).

MASSACHUSETTS PROFILE

ACKNOWLEDGMENTS

The Academy thanks Paul P. Heffernan, Clerk/Magistrate of the Trial Court of the Commonwealth, Juvenile Court Department; David Segal, Research Coordinator, Department of Youth Services; Elizabeth A. Pattullo, Greater Boston Legal Services, Juvenile Court Advocacy Program; and Peter Larkowich, Criminal History Systems Board, for their assistance with the survey. Special thanks go to Jack Calhoun, former Director, Department of Youth Services, for assistance in facilitating the process, and William Highgas, Jr., Executive Director, Committee on Criminal Justice, for reviewing the Massachusetts profile. In addition, appreciation is expressed to the many other state and local officials who provided data.

The Academy also expresses its gratitude to the following people in Massachusetts for their assistance, interest, and cooperation during personal interviews for the case study:

Steve Bang, Director
Massachusetts Advocacy Center
Boston

Jay Blitzman
Massachusetts Defenders Association
Boston

Francis W. Blumm, Assistant District Attorney
Hampden County District Attorney's Office
Springfield

Bernard Bradley, Regional Supervisor
Massachusetts Defenders Committee
Boston

Liz Crimmins
Massachusetts Defenders Association
Boston

Joseph Dever, Essex Regional Supervisor
Massachusetts Defenders Committee
Lynn

Juliette Faye, Juvenile Justice Planner
Massachusetts Committee on Criminal Justice
Boston

Honorable Tullio A. Francesconi
Springfield Juvenile Court

Richard Gargiulo, Defense Attorney
Boston

Molly Goldberg
Massachusetts Defenders Association
Boston

Joseph Greene, Chief District Court Prosecutor, Essex County
Salem

Honorable Robert E. Hayes
District Court
South Essex Division
Lynn

William T. Hogan, Jr.
Commissioner of Corrections
Massachusetts Department of Corrections
Boston

Honorable Roderick Ireland
Boston Juvenile Court

John Isaacson, Director
Massachusetts Office for Children
Boston

Representative Philip Johnston
Massachusetts House of Representatives
Boston

Joe Kelly
Senior Juvenile Justice Specialist
Massachusetts Committee on Criminal Justice
Boston

Joseph McDonough, Assistant District Attorney
Juvenile Division, Suffolk County
District Attorney's Office,
Boston

Edward Murphy, Commissioner
Massachusetts Department of Youth Services
Boston

Professor Lloyd Ohlin
Professor of Law
Harvard Law School
Cambridge

Elizabeth Pattullo, Senior Program Specialist
Juvenile Court Advocacy Program
Boston

Honorable Francis Poitrast, Chief Justice
Boston Juvenile Court

David Rodman, Executive Assistant
District Attorney's Office, Suffolk County
Boston

David Segal, Acting Director
Planning and Research (1980)
Massachusetts Department of Youth Services
Boston

Sarah Sellinger, Assistant Commissioner of Clinical Services
Massachusetts Department of Youth Services
Boston

Honorable William Simon
Hampden County
Superior Court
Springfield

Sims Sitkin, Director
Planning and Research (1980)
Massachusetts Department of Youth Services
Boston

Carol Smith
Massachusetts Defenders Association
Boston

Detective Kathleen Thornton
Juvenile Division
Boston Police Department

Greg Torres, Criminal Justice Specialist
Massachusetts Office of Human Services
Boston

Betty Vorenberg, Deputy Director
Massachusetts Advocacy Center (1981)
Boston

METHODOLOGY

The data representing 17 year olds tried initially in adult courts due to the lower age of juvenile court jurisdiction were obtained from the

Massachusetts Department of Public Safety, Crime Reporting Unit. The state agency provided state-wide total arrest figures of persons 17 years of age. In addition, the gender of the 17 year olds arrested and the offenses for which arrests occurred were provided statewide.

Frequency data (Phase I) on judicial waivers were obtained from two sources. First, the Department of Youth Services provided estimated judicial waiver data by county. In addition, this same information was sought from county prosecutors or juvenile court personnel through telephone interviews conducted by Academy staff. Frequency data were not available from two of the 14 counties (Essex and Middlesex) from local sources. Also, the data obtained from the local survey did not correspond to the estimated data supplied by state sources.

Phase II data on age, sex, race, offenses, dispositions, sentence types and sentence durations were requested from the most populous ten percent of the counties and counties reporting five or more transfers; however, these data were not available in any county from local sources.

Data on juveniles cited to adult court for traffic violations were not available from either local or state officials. Similarly, no systematic data were available on the percentage of arrests of 17 year olds that resulted in court filings; however, state officials indicate that almost all arrests result in court filings.

Massachusetts was selected as the case study state representing federal administrative region 1. It is the tenth largest state in population, with an extremely dense urban population.

One reason Massachusetts was of interest as a case study state was that in the early 1970s, the Department of Youth Services closed its juvenile corrections institutions, except for several secure detention units. Since that time, statewide concern over current handling of serious juvenile offenders has resulted in the establishment of several task forces to study violent and serious juvenile offenders. One assumption made was that the closing of the correctional institutions and the resultant great concern expressed within the state would have an effect on the practice and frequency of referral to adult courts.

Massachusetts is also of interest in that there are three mechanisms through which youth under 18 years of age can be tried in adult courts:

- Seventeen year olds are subject to criminal court jurisdiction for offenses committed after the 17th birthday, due to the maximum age of juvenile court jurisdiction.
- Fourteen, 15, and 16 year olds are eligible for judicial transfer to adult courts; and
- Adult courts have concurrent jurisdiction over 16 year olds charged with certain minor traffic violations.

These three categories of youth, particularly the first two, are the subject of this case study.

On-site interviews were conducted in four sites following the standard MIJJIT format in March, 1980. These included Suffolk County (Boston), the location of the state capital; Middlesex County (East Cambridge), the largest county; and a typical county (Essex). Hampden County (Springfield) was added because it might offer unique perspectives as a large community which is geographically removed from the influence of Boston.

Interviews were conducted with judges, state legislators, public defenders, prosecutors, youth advocates, corrections officials, police, the media, and other people involved in the referral of youth to adult courts. Questions were asked about the effects of trying youth as adults on the youth, the public, and the juvenile and criminal justice systems. In addition, questions were asked about the present Massachusetts system for referring youth to adult courts, needed changes, and the factors to be considered when deciding to refer a youth for trial as an adult. The research team was also interested in whether respondents believed that 17 year olds should be handled as juveniles, as they are in most of the United States.

Responses from about 30 interviewees, along with data from the Academy's 1978 census, task force reports, and research studies, were integrated in compiling the Massachusetts case study. This was supplemented by legal and organizational research concerning the present legislation, statutory history, case law data, and court and correctional organizational studies conducted by the Academy.

HISTORY OF STATUTES RELATING TO JURISDICTION AND TRANSFER

Currently in Massachusetts, youth under 18 years of age may be tried as adults under three legal mechanisms. First, 17 year olds are routinely handled in the adult courts because of the lower age of criminal court jurisdiction. Second, judicial waiver applies to youth 14 years of age and older if they qualify under either of two provisions (see Transfer Process subsection). Finally, youth 16 years of age charged with traffic offenses may be tried as adults due to concurrent jurisdiction over such cases. The provisions governing the court's procedures for dealing with juveniles in Massachusetts had their beginnings in the mid-1800s. The national movement to "save" the children produced the nation's first state-supported reform school at Westborough, Massachusetts, in 1849. The provisions for committing juveniles to the reform schools were codified in 1870, a codification which was the forerunner of the juvenile code.[1] Also, by 1870 some Massachusetts courts scheduled dockets only for children, and not only for their minor offenses.

The first comprehensive juvenile code in Massachusetts was enacted in 1906.[2] The definition of delinquency was any juvenile between the ages of seven and 17 years who had violated any state law, city ordinance, or town by-law, except for 14 to 17 year olds charged with offenses which were punishable by death or life imprisonment. The entities authorized to handle juvenile matters were the municipal and district courts, the trial justices, and the police. The Municipal Court of Boston was excluded, however, due to the existence of a separate juvenile court there.

With the enactment of the 1906 juvenile code, it became possible to try youth in adult courts through any one of three statutory provisions. Two of them permitted the use of judicial transfer and the third provision created a class of offenses excluded from juvenile court jurisdiction.

The two judicial transfer provisions applied to juveniles based upon their age at the time the alleged offenses occurred:

- Juveniles 14 to 17 years of age could be transferred, at the discretion of the juvenile courts, for any violation of state law, town by-law, or city ordinance if, in the court's opinion, the best interest of the youth and the public required that the youth be tried as an adult.[3]

- Juveniles seven to 14 years of age could be transferred, at the discretion of the juvenile courts, only in cases where the charges constituted capital offenses, that is, punishable by life or death sentences. In order to transfer the cases, the juvenile courts had to first institute delinquency proceedings and then determine that it was in the best interest of the youth and the public to proceed with a criminal charge in adult court. If so ordered, the delinquency proceedings were dismissed.[4]

All capital offenses charged against youth 14 years of age and older were automatically excluded from juvenile court jurisdiction. In such cases, criminal charges were filed directly in adult courts.

This statute was amended in 1933 to lower the minimum age for transfer in non-capital cases to seven years of age.[5] In 1948, the judicial transfer statute was again amended to raise the minimum transfer age back to 14, thus reverting to the 1906 laws.[6] That same year, the legislature modified the excluded offense provision by deleting the exclusion of offenses punishable by life imprisonment.[7] Thereafter, the offenses excluded from juvenile courts were only those offenses punishable by death. Offenses punishable by life imprisonment were added to juvenile court jurisdiction, subject to the possibility of transfer. This portion of the statute remained unchanged until 1960, when the type of offenses defining delinquent behavior were again revised. The 1960 act redefined a delinquent juvenile as any juvenile who committed any offense against a law of the Commonwealth and deleted the exclusion of offenses punishable by death from the definition of delinquency.[8] The removal of this last vestige of adult courts jurisdiction meant that all juvenile offenses, regardless of alleged offense, were now within the exclusive jurisdiction of juvenile courts.

In 1965, the legislature altered the definition of the courts authorized to handle juvenile matters to the district courts, except in cities in Suffolk County, which were served by the Juvenile Court of Boston.[9] The tendency to allow highly populated areas to have juvenile courts apart from the district courts has continued, whereby Bristol County and the cities of Springfield and Worcester (in addition to Boston/Roxbury) now have juvenile courts apart from the district courts (see Court Organization subsection).

The latest amendments to the transfer process occurred in 1975. These amendments limited the offenses for which youth can be judicially transferred to adult courts (see Transfer Process subsection) and promulgated rules clarifying several procedural issues, including:

- the requirement of a transfer hearing;
- that at least seven days notice of the transfer hearing be given the juvenile or his counsel, as well as the juvenile's parents; and
- that the order and finding of the transfer hearing be filed in writing.[10]

CASE LAW SUMMARY

Prior to the 1960 amendments, the Massachusetts code provided that offenses punishable by death were excluded from juvenile court jurisdiction. The following cases were decided in regard to statutes existent prior to the 1960 changes. The Supreme Judicial Court of Massachusetts (the court of last resort), in Metcalf v. Commonwealth, held that superior court lost jurisdiction when the defendant entered a plea of guilty to second degree murder, since this crime was not a capital offense.[11] The case was then directed to juvenile court for further proceedings. In Commonwealth v. Chase, a case arising out of the same facts as in Metcalf, the court held that the defendant's prior plea of guilty to second degree murder operated as a bar to a subsequent prosecution for first degree murder.[12] Further, after Chase had been reindicted, the court held that he was entitled to plead not guilty and was not bound by his former plea of guilty. The former plea could, however, be introduced into evidence against him. Finally, in Nassar v. Commonwealth, the court held that amendments to the statutory sections providing for the exclusion of certain offenses were not intended to and would not be applied retroactively.[13]

The Supreme Judicial Court of Massachusetts in Metcalf also held that a juvenile's age should be determined at the time of the commission of the offense.[14] However, in D'Urbano v. Commonwealth, the court held that an individual over the age of 21 years who was apprehended for a crime committed when 16 years old was no longer entitled to treatment as a juvenile offender.[15] In addition, the court held, in Joyner v. Commonwealth, that an individual who was

18 years of age or older was not a "child," as that word was used in the state, and could not be prosecuted for "stubborn" acts which may have occurred during his childhood.[16]

The Supreme Judicial Court of Massachusetts has rendered several opinions concerning the later waiver or transfer statutes. In *Commonwealth* v. *Roberts*, the court refused to apply the decision of *Kent* v. *United States*, because the court felt that that case was not decided on constitutional grounds and was not, therefore, binding upon Massachusetts' statutory law.[17] Therefore, the court held that the defendant had no constitutional right either to a record of the hearing or a written statement of reasons for the transfer from the Boston Juvenile Court. However, the court held, in *Commonwealth* v. *A Juvenile*, that the juvenile was entitled to a second hearing in juvenile court since the juvenile judge had failed to supply the required written statement of reasons in support of an order dismissing the juvenile complaint.[18] The Supreme Judicial Court refused to require a written statement of reasons for transfer from the Boston Juvenile Court since this court is not a "district court" enumerated in Massachusetts law.[19]

In *In re Juvenile*, the court upheld the constitutionality of the Massachusetts statute authorizing juvenile courts to dismiss a juvenile complaint so that an adult complaint can be issued.[20] Further, the court held that the transfer procedure does not constitute a double jeopardy violation with respect to the subsequent criminal prosecution, since the former is not adjudicatory in nature. In addition, in *Commonwealth* v. *White*, the court reiterated the holding in *Roberts*.[21] (See also, *Commonwealth* v. *Franklin*).[22]

In *Stokes* v. *Commonwealth*, the court reaffirmed the holding in *In re Juvenile* concerning the double jeopardy issue.[23]

Subsequent to the 1975 legislative change amending the transfer provision, the court held, in *A Juvenile* v. *Commonwealth* (1976), in light of the law then existing, no error had been committed in proceedings in which the juvenile complaint was dismissed so that the juvenile could be tried as an adult. The interests of justice warranted a remand for a new hearing in which consideration was to be given to issues of transfer and probable cause in accordance with the new legislation. The court held a transfer hearing is to determine whether to treat the accused as a juvenile or an adult, considering factors such as amenability to juvenile treatment, seriousness of alleged offense and public interest. However, a transfer decision cannot be based solely on the seriousness of the offense nor on the inadequacy of existing juvenile facilities. The decision must be founded on a finding that the juvenile cannot be rehabilitated within the present juvenile structure or that without long-term supervision the youth poses a serious threat to the community.[24] The court also held, in *A Juvenile* v. *Commonwealth* (1978), that a second probable cause hearing was proper where the first one resulted in a finding of no probable cause and new evidence subsequently became available.[25] Finally, the court held in *Connaughton* v. *District Court of Chelsea* that a defendant in a probable cause hearing is entitled to have a stenographer take the testimony.[26]

Juvenile Court Dispositional Options

Massachusetts is one of the few states which permit juveniles to be released on bail. Massachusetts is also one of a minority of states which permits jury trials in juvenile courts.[27]

Juveniles detained within the state cannot be held in an adult facility. Initial detention decisions are made by the juvenile courts and the Department of Youth Services (DYS). The courts determine whether the juvenile should be detained, and DYS decides where the juvenile is to be detained. The single statutory rationale for detention is the likelihood that the youth will not appear for the court hearing.[28]

The Office for Children in the Executive Office on Human Services is responsible for the licensing of secure detention units, with minimum standards covering physical and safety features, provisions for crisis counseling, work with families, and recreation, medical, and educational services. The office also establishes regulations on length of stay (30 to 45 days). For secure units, the Office of Children has granted a waiver extending this period indefinitely.

An important element of the likelihood of rehabilitation of juveniles in the juvenile justice system is the array of services and dispositional options available to that system.

For juveniles not judicially transferred for trial as adults, there are several dispositional alternatives available to the juvenile courts.

- Find juveniles not delinquent.
- Dismiss the case because of lack of evidence, or because faulty evidence has been obtained.
- File the case without any further consequences for the juveniles, provided further problems are avoided.
- Issue a continuance without a finding of guilt or innocence.
- Find the juveniles delinquent. In such cases, the juveniles may be placed on probation, fined, or committed to DYS. DYS placements include privately operated residential settings, including the juveniles' homes, and foster homes; group homes; vocational schools; or parole. It should also be recalled that the juvenile court judges do not sentence juveniles to a particular program; they can only commit juveniles to DYS.

In lieu of a formal disposition, the courts may refer juveniles to DYS for treatment if the juvenile, parents, attorney, and judge agree to the referral.

Procedures have been implemented which place 90 percent of convicted juveniles in community programs. While there are no longer any large juvenile institutions, the state does maintain a Secure Treatment System, which is composed of secure treatment units.

No provision exists in the juvenile code which empowers juvenile courts to commit delinquents to adult facilities. There does not appear to be any provision permitting the DYS to transfer custody of juveniles to the adult correctional department.

PROCEDURES FOR TRYING YOUTH AS ADULTS IN 1978

Court Organization

During the first half of 1978, the superior courts were the highest courts of general jurisdiction in Massachusetts. These courts exercised jurisdiction over all criminal cases (misdemeanors and felonies), misdemeanor appeals, and civil cases throughout the state's 14 counties.

The 72 district courts also had jurisdiction over misdemeanors and those felonies involving maximum sentences of five years or less. In addition, there was a municipal court for the City of Boston with jurisdiction over misdemeanors and all felonies involving maximum sentences up to five years or fines up to $5,000.

Juvenile jurisdiction was exercised by the district courts in most counties during the first half of 1978. Bristol County and the cities of Boston, Springfield, and Worcester each had separate juvenile courts. Hereafter, all courts with juvenile jurisdiction will be referred to as juvenile courts.

Concurrent jurisdiction exists between adult and juvenile courts over juveniles (16 years old) charged with traffic violations. The courts of the state were reorganized by the legislature as of July 1, 1978.[29] The reorganization unified the various courts of general and specialized jurisdiction into one administrative unit designated by the legislature as the "trial court." The superior and district courts are now departments within the trial court, although they continue to have the same jurisdictions they had prior to the reorganization, including juvenile proceedings in most locations. The four juvenile courts which were previously independent now comprise the Juvenile Court Department within the trial court. They continue to exercise the same juvenile jurisdiction they had prior to the reorganization. The Boston Municipal Court, since the reorganization, exists as a department within the trial court. An overview of Massachusetts' courts by their jurisdiction over juveniles appears below.

MASSACHUSETTS: COURT JURISDICTION OVER JUVENILES IN 1978[a]

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic[c]
District Court Department (Most Locations)	Superior Court Department	District Court Department
Juvenile Court Department[b] (4 locations)		Boston Municipal Court Department
		Juvenile Court Department or Juvenile Session of District Court Department

a. Identified in labels applicable following the July 1, 1978, reorganization. Prior to that, the jurisdictions were the same but they were not departments within a unified state trial court system.

b. Prior to the above reorganization, the four juvenile courts were separate.

c. Youth 16 years of age or younger and charged with traffic offenses may be tried in either adult or juvenile courts. Seventeen year olds charged with traffic offenses are automatically tried in adult court because the maximum age of juvenile court jurisdiction extends to 17 years of age.

TRANSFER PROCESS

The initial age of juvenile court jurisdiction in Massachusetts extends to 17 years of age.[30] Therefore, youth who are 17 years old are automatically subject to prosecution in adult courts in Massachusetts. Judicial waiver and concurrent jurisdiction provisions are the other two legal mechanisms associated with the referral of youth to adult courts.

Judicial Waiver

Juveniles 14 years of age or older are eligible for judicial transfer to adult courts in Massachusetts.[31] This can occur in two circumstances: (1) if previously committed to the Department of Youth Services as delinquents and subsequently charged with offenses which if committed by adults would be punishable by imprisonment; or (2) if charged with offenses involving the infliction or threat of serious bodily harm.

In either case, juvenile courts must hold a transfer hearing. State sources indicate that judges or prosecutors may request a hearing. The transfer hearing itself is divided into two parts, hereafter designated Part A and Part B.

The Part A hearing is intended to determine whether probable cause exists that the juvenile committed the offense alleged. In the Part A hearing, the burden of proof is on the state, and the standard of proof must be that applicable to a criminal, probable cause hearing. If the court finds no probable cause, a finding is made part of the record of the case, and the juvenile is discharged. However, if the court finds probable cause, the court sets a date for a Part B hearing. The transfer hearing may be continued upon the request of either the state or counsel for the juvenile.

At the Part B hearing, the question is whether the juvenile court should retain jurisdiction or whether the case should be transferred to the adult courts. The juvenile court begins by ordering DYS to complete a transfer hearing report. This report is made available to the attorneys for the state and for the juvenile, prior to the commencement of the Part B hearing. The court may admit any evidence that is material and relevant to the decision whether to transfer the case. The court must consider the seriousness of the alleged offense; the juvenile's family, school, and social history; adequate protection of the public; any past treatment of the juvenile, and the likelihood of rehabilitation. The burden of proof is on the state to establish by "clear and convincing evidence that the child presents a danger to the public as demonstrated by the nature of the offense charged and the child's past record of delinquent behavior, if any, and is not amenable to rehabilitation as a juvenile."[32]

If, after the transfer hearing, the court decides to transfer the juvenile, the court must dismiss the delinquency complaint(s), enter a written finding and order, arraign the youth on the adult complaint(s), and set bail. The matter is then referred to the grand jury, as is the routine practice with adult cases in Massachusetts.

If, after the transfer hearing, the court decides to treat the juvenile as a juvenile, the court proceeds to an adjudicatory hearing in accordance with the provisions of state law.[33] The judge who conducted the transfer hearing is barred from hearing any subsequent proceeding arising out of facts alleged in the delinquency complaint(s), unless the juvenile, by counsel, waives this protection.

Concurrent Jurisdiction

Massachusetts' adult courts share concurrent jurisdiction with juvenile courts over youth 16 years old who are charged with traffic offenses which are not punishable by imprisonment or by a fine of more than $100.[34]

Lower Age of Criminal Jurisdiction

Youth 17 years old are routinely handled as adults in Massachusetts. (A juvenile who commits an offense prior to reaching 17 years of age, but is not apprehended until after the 17th birthday is treated as a juvenile.) These persons are subject to the same court procedures and dispositional alternatives as persons 18 years old or older, and are discussed in a separate section of the data summary which appears later in this profile.

Role of the Prosecutors

In order to complete the judicial transfer procedure, the district attorney's office must move for a transfer hearing within seven days of arraignment. In small towns or rural areas of Massachusetts, this function had been the duty of police prosecutors, although the trend is away from that practice, with most of the motions for transfer hearings now being filed by district attorneys. The courts, on their own motion, may initiate the judicial transfer procedure, as well. Whatever the manner of initiation, prosecution of these motions, as well as such cases in criminal courts, is the responsibility of the district attorneys. The actual transfer determinations are the prerogatives of the juvenile court judges.

Defender Services

Unlike many states, Massachusetts does not maintain a public defenders' office per se. In Boston and other urban areas, that function is served by the Massachusetts Defenders' Association. Massachusetts respondents described a set of loosely arranged agreements in the smaller counties that govern who represents youth during transfer hearings. In these smaller counties, private attorneys are generally appointed to represent the youth during the transfer hearing.

Defense attorneys report that they normally attempt to keep their juvenile clients out of criminal courts. They attempt to find a youth-oriented program that would appeal to the presiding judge, convince the judge of the efficacy of the program and, finally, present the client as wholly appropriate for admission to the program. If the case is already in the criminal courts, defense counsel attempts to exclude, or at least prevent, the introduction of any of the youth's prior delinquency record with the juvenile court.

Confinement Practices

Detention Practices

Juveniles awaiting transfer hearings may be held in secure juvenile facilities. Youth transferred to adult courts for trial as adults can continue to be held in secure detention, be placed in jail, or be released on bail set by the criminal court.

Seventeen-year-olds are adults in Massachusetts and may be placed in jail for detention, if they cannot meet bail or release on recognizance criteria.

Sentencing Options

Youth judicially transferred to adult courts and subsequently convicted can receive sentences of probation, incarceration within the Department of Corrections or any disposition as a delinquent child, including commitment to DYS.[35] Generally, these youth are placed in adult correctional facilities. The Massachusetts Correctional Institution at Concord, a medium-security institution, is most frequently used for younger criminal offenders. According to the Massachusetts Advocacy Center, "all Concord inmates are eligible for pre-release programs as soon as they are within 18 months of parole."[36] However, it has also been reported that youth may actually stay at Concord only as long as necessary for their diagnostic evaluation to be completed and then return to the streets.[37] Most of them are eligible for parole within six months.

If transferred youth are under 18 years of age at the time of the plea/findings, the adult courts can adjudicate them delinquent in lieu of conviction and sentence the youth to DYS if the youth are under 18 years of age at time of commitment.[38] DYS can retain custody of these youth until they attain 21 years of age.

With the consent of the Department of Youth Services, the commissioner of corrections can tranfer a youth under 17 years of age, from the Massachusetts reformatory for men or women, to a disposition determined after study by DYS, that will best serve the "needs of the youth and protect the interests of the public."[39]

Since 17 years olds are adults in Massachusetts, they can receive any sentence available for adults. The adult courts cannot sentence to DYS youth 17 years of age at the time of the offense who are arrested as adults (except as provided below). If a youth in the custody of DYS because of a juvenile proceeding commits an offense after the 17th birthday, the adult courts will have jurisdiction. However, this does not necessarily mean that DYS loses custody of the youth. If the adult courts render an adult disposition, then DYS would be required to relinquish custody. However, if the courts do not render an adult disposition, DYS would retain custody until the youth reaches 18 years of age.[40]

STATE DATA SUMMARY

In Massachusetts, 17 year olds are routinely handled in the adult system because initial juvenile court jurisdiction ends when a youth becomes 17 years of age. Individuals 14 years old and over are eligible for judicial transfer in two cases: (1) if previously committed to the Department of Youth Services as a delinquent and subsequently charged with new offenses which, if committed by an adult, would be punishable by imprisonment; or (2) if charged with offenses involving the infliction or threat of serious bodily harm. In addition, youth 16 years old charged with traffic offenses may be tried as adults due to concurrent jurisdiction.

Table 22-1A reflects data reported by state sources regarding judicial transfers and arrests of 17 year olds subject to adult prosecution due to age of jurisdiction. The estimated number of youth judicially transferred for adult prosecution in 1978 by county was reported by the Department of Youth Services. According to DYS, these estimated data were compiled from multiple sources, including Department of Probation records, and supplemented by DYS information. A total of 33 youth were estimated to have been judicially transferred in 1978, for a rate of 0.326 per 10,00 juveniles. Suffolk County, which includes Boston, had 20 estimated transfers, for the highest rate of 1.858 cases.

The Department of Public Safety reported that 12,393 youth aged 17 were arrested and subject to prosecution in adult courts in 1978, due to lower age of criminal jurisdiction. This information could not be reported by county, nor could the counties supply these data themselves.

TABLE 22-1A. MASSACHUSETTS: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND MECHANISMS) REPORTED BY STATE SOURCES

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver		Age of Jurisdiction	
		Cases[c]	Rate[b]	Cases[d]	Rate[b]
Barnstable	21,244	0	0.000	*	*
Berkshire	26,041	0	0.000	*	*
Bristol	81,622	0	0.000	*	*
Dukes	1,277	0	0.000	*	*
Essex	111,260	0	0.000	*	*
Franklin	10,330	0	0.000	*	*
Hampden	82,149	4 est	0.487	*	*
Hampshire	18,898	1 est	0.529	*	*
Middlesex	245,956	2 est	0.081	*	*
Nantucket	980	0	0.000	*	*
Norfolk	111,769	1 est	0.089	*	*
Plymouth	77,201	2 est	0.259	*	*
Suffolk	107,655	20 est	1.858	*	*
Worcester	115,379	3 est	0.260	*	*
Total	1,011,761	33 est	0.326	12,393	122.489

* denotes Not Available.

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

c. An additional five cases were reported by the state sources, but could not be verified by these sources.

d. Arrest data provided by Department of Public Saftey, Crime Reporting Unit sources estimated that the number of court filings approximates the number of arrests by about 95 percent. Data could not be reported by county.

Table 22-1B provides the data reported by county sources on the number of youth judicially transferred to adult courts in 1978. Although the data supplied by DYS and displayed in the preceding table were derived from state

Department of Probation records, it appears the local probation office records did not coincide with the state sources. In total, the county sources reported 57 judicial transfers, with Essex and Middlesex Counties, two largely populated counties, not being able to report. Suffolk County reported the largest number of cases (33), for a rate of 3.065 per 10,000 juveniles and the second largest frequency was reported by Barnstable County with six cases. The Barnstable figure may be somewhat misleading due to the effect of the large transient population during the summer months. Sources in Barnstable County, a relatively small community, estimated that most of those six bindovers were filed against nonresidents who are drawn to the tourist areas and were charged with felonies. Of the 12 reporting counties in Massachusetts, four reported no juvenile transfers during 1978.

TABLE 22-1B. MASSACHUSETTS: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND MECHANISMS) REPORTED BY LOCAL SOURCES

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases	Rate[b]
Barnstable	21,244	6	2.824
Berkshire	26,041	3	1.152
Bristol	81,622	3	0.368
Dukes	1,277	0	0.000
Essex	111,260	*	*
Franklin	10,330	0	0.000
Hampden	82,149	5 est	0.609
Hampshire	18,898	1	0.529
Middlesex	245,956	*	*
Nantucket	980	0	0.000
Norfolk	111,769	1 est	0.089
Plymouth	77,201	0	0.000
Suffolk	107,655	33	3.065
Worcester	115,379	5	0.433
Total	1,011,761	57 est	0.563

* denotes Not Available.

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

Judicial Waiver

The DYS also reported some Phase II information about the 33 judicial transfer cases, but not by county. The average age of these youth was 16 years, seven months and all were males. Seventeen (52 percent) youth were white, while 11 of the 16 minority youth were black, the remainder being hispanic.

Local sources were not able to provide any Phase II data about the 57 judicial transfers they reported.

Utilizing state-provided written reports, additional data on judicial transfer practices were accumulated. Table 22-2 presents data on the frequencies of judicial transfers statewide from 1974 to 1979. After a precipitous decline from 1975 to 1977, it appears that the frequency of judicial transfers has since been increasing, although still below pre-1977 levels.

TABLE 22-2. MASSACHUSETTS: FREQUENCIES OF JUDICIAL TRANSFERS STATEWIDE FROM 1974 to 1979

Calendar Year	Youth Transferred
1974	76
1975	126
1976	75
1977	25
1978	33
1979	45

Source: Data provided to the Academy by the Department of Youth Services.

Although Phase II data on youth judicially transferred in 1978 were limited, the Office of Commissioner of Probation report "Juvenile Bindovers in Massachusetts: 1979" does contain such data.[41] The data was gathered through questionnaires submitted to probation officers throughout the state and presented as statewide aggregates for calendar year 1979. Unlike the breakdown by county in the Academy census data, the data from the Office of Commissioner of Probation is presented as statewide aggregates.

Table 22-3 presents a demographic breakdown--age, sex, race--of youth judicially transferred to adult courts in 1979, as reported by the Office of Commissioner of Probation. The overwhelming majority (76 percent) were 16 years of age at the time of arraignment. Sixteen percent of the youth were 15 years of age or younger. Nine percent were 17 years old or older, due to 17th birthdays before arraignment on offenses committed before those dates. All of the youth were males, and 69 percent were white.

TABLE 22-3. MASSACHUSETTS: JUDICIAL WAIVERS TO ADULT COURTS (BY AGE, SEX, AND RACE) IN 1979

	Total Waivers	Age[a]				Sex		Race	
		0-15	16	17	18+	Male	Female	White	Minority
State Totals	45	7	34	3	1	45	0	31	14

a. Age at time of arraignment

Source: Compiled from data presented in "Juvenile Bindovers In Massachusetts: 1979." Office of the Commissioner of Probation, December 15, 1980.

Table 22-4 and Figure 22-1 reflect the breakdown of charges for youth judicially transferred in 1979. The table indicates that in Massachusetts judicial transfer is reserved for only very serious or chronic offenders under 17 years of age. Personal offenses (murder, manslaughter, rape, robbery, assaults, and other personal offenses) accounted for 80 percent of the judicial transfers. Property offenses (primarily larceny and breaking and entering) accounted for

TABLE 22-4. MASSACHUSETTS: JUDICIAL WAIVERS TO ADULT COURTS (BY TYPES OF OFFENSES) IN 1979

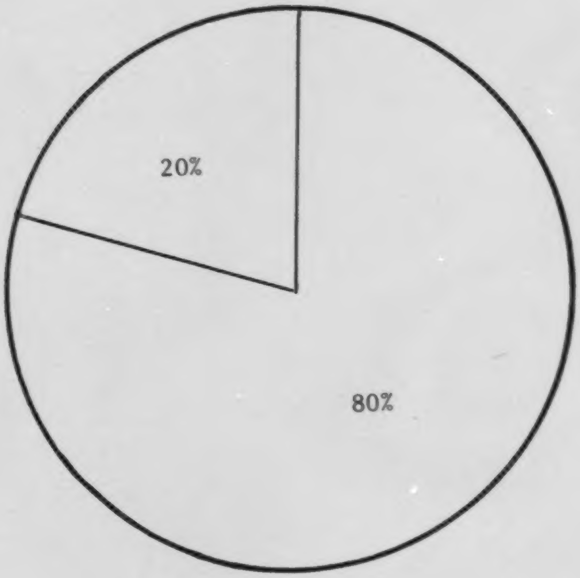
County	Total Waivers	Offenses[a]									
		Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
State Totals	45	7	8	11	5	5	0	0	9	0	0

a. Only the most serious charge per individual is listed.

Source: Compiled from data presented in "Juvenile Bindovers in Massachusetts: 1979", Office of the Commissioner of Probation, December 15, 1980.

the remaining 20 percent. It is interesting to note that none of the youth were transferred for public order or "other general" offenses. Figure 22-1 graphically depicts these offense categories by percentages.

FIGURE 22-1. MASSACHUSETTS: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS (BY OFFENSE CATEGORY) IN 1979



Offenses[a]

Personal	80%
Property	20%
Public Order	0%
Other General	0%

N = 45

a. Violent offenses (murder, manslaughter, rape, robbery, and aggrevated assault) represented 69 percent of all offenses for which youth were judicially transferred statewide in 1979.

Source: Compiled from data presented in "Juvenile Bindovers in Massachusetts: 1979." Office of the Commissioner of Probation, December 15, 1980.

Judgments of youth tried in adult courts after judicial transfer in 1979 are shown in Table 22-5. Of the known judgments, 90 percent were found guilty. Two youth had cases dismissed and one was found not guilty.

TABLE 22-5. MASSACHUSETTS: JUDICIAL WAIVERS TO ADULT COURTS (BY JUDGMENTS IN ADULT COURTS) IN 1979

	Total Waivers	Not Guilty	Dismissed	Guilty	Other[a]
State Totals	45	1	2	28	14

a. These were cases still pending at the time the data collection, July 30, 1980.

Source: Compiled from data presented in "Juvenile Bindovers in Massachusetts: 1979." Office of the Commissioner of Probation, December 15, 1980.

The cited study also noted that the cases of nearly 50 percent of the youth judicially transferred took from six to 18 months from the time of arraignment in juvenile court to the time of disposition in adult court.[42] The average of all judicially transferred cases was seven months from arraignment to disposition.

Sentences for youth convicted following judicial transfer to adult courts in 1979 appear in Table 22-6. Of the 28 youth receiving sentences, 68 percent (19) were incarcerated, with 46 percent (13) being sentenced to state adult corrections facilities. Eighteen percent (5) were committed to DYS and 32 percent (9) received supervision in the community (including probation). Only one youth was sentenced to jail.

TABLE 22-6. MASSACHUSETTS: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS (BY SENTENCE TYPE) IN 1979

	Total Convictions	Probation/ Community Supervision	Jail	State Adult Corrections Facilities	D.Y.S.
State Totals	28	9	1	13	5

Source: Compiled from data presented in "Juvenile Bindovers In Massachusetts: 1979." Office of Commissioner of Probation, December 15, 1980.

Lower Age of Criminal Jurisdiction

This section contains a brief series of tables and discussion pertaining to the Phase II information on Massachusetts 17 year old youth arrested and subject to prosecution due to lower age of criminal jurisdiction. The state source of this information was not able to provide it by county, therefore, state aggregated data are presented.

The demographic information in Table 22-7 reflects that among the 12,393 17 year olds, 11,267 (91 percent) of them were males. No race data were recorded by the Uniform Crime Reports.

TABLE 22-7. MASSACHUSETTS: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY SEX) IN 1978[a]

County	Total Arrests[b]	Sex	
		Male	Female
State Totals	12,393	11,267	1,126

a. Race data were unavailable.

b. All youth arrested were 17 years of age.

Table 22-8 displays the charges against these arrested 17 year olds. Public order offenses accounted for 48 percent (5,988) of the referrals and property offenses (burglary and other property) represented 27 percent (3,402). The "other property" offense category included forgery, fraud, embezzlement, receiving stolen property, larceny, and auto theft. Public order offenses included drug and liquor violations, disorderly conduct, gambling, and conspiracy. Personal offenses (murder, manslaughter, rape, robbery, assaults, arson, and other personal offenses) comprised ten percent (1,191) of the charges. Figure 22-2 graphically depicts the offense categories by percentages.

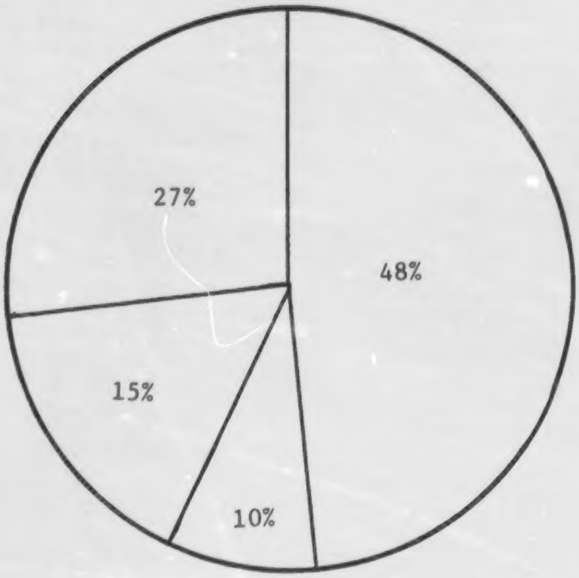
TABLE 22-8. MASSACHUSETTS: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY TYPES OF OFFENSES) IN 1978[a]

		Offenses[b]									
County	Total Arrests	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
State Totals	12,393	7	27	258	315	438	146	1,226	2,176	5,988	1,812

a. All youth arrested were 17 years of age.

b. Only most serious offense per individual listed.

FIGURE 22-2. MASSACHUSETTS: PERCENTAGE OF YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE CATEGORY) IN 1978[a]



Offenses[b]	
Personal	10%
Property	27%
Public Order	48%
Other General	15%

N = 12,393

---

a. All youth arrested were 17 years of age.

b. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent six percent of all offenses in the state.

Table 22-9 reflects a detailed breakdown of the actual charges filed against 17-year-old adults. It reflects the highest frequency, 3,142 referrals, for liquor violations (25 percent). Public order offenses, including liquor and drug violations and other public order offenses such as disorderly conduct, gambling, malicious destruction and prostitution accounted for almost 50 percent of the arrests of 17 year olds in 1978. Property offenses, including burglary, larceny, auto theft, trespassing and other property offenses accounted for 27 percent of the arrests. Crimes against persons including murder, manslaughter, rape, robbery, assaults, arson and other personal offenses accounted for 10 percent of the arrests.

Of the 1,191 crimes against persons, 730 offenses could be described as violent offenses. The 730 violent offenses comprise six percent of the total number of arrests of 17 year olds. Aggravated assault was the largest single violent offense with 438 (60 percent) of the total number of violent offenses. Robbery was the second most frequent with 258 (35 percent) of the total. The "other general" category primarily included violations of municipal ordinances, curfew violations, runaways, and less serious assaults. This category is specific to Massachusetts and may vary slightly from the offenses included in this category in other states.

TABLE 22-9. MASSACHUSETTS: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE TYPE AND FREQUENCY) IN 1978

Types of Offenses	Violent Offense Subtotals	Offense Category Subtotals	Totals
PERSONAL OFFENSES			1,191
Violent Offenses		730	
Murder	5		
Manslaughter	2		
Rape	27		
Robbery	258		
Aggravated Assault	438		
Arson		55	
Kidnapping		*	
Assault/Battery		315	
Other Personal		91	
PROPERTY OFFENSES			3,402
Burglary		1,226	
Larceny		1,220	
Auto Theft		640	

TABLE 22-9 (Continued)

Types of Offenses	Violent Offense Subtotals	Offense Category Subtotals	Totals
Trespassing		*	
Other Property		316	
PUBLIC ORDER OFFENSES			5,988
Drug Violations		1,118	
Liquor Violations		3,142	
Other Public Order		1,728	
OTHER GENERAL OFFENSES			1,812
Status Offenses[a]		25	
Offenses Against the Family		19	
Other General[b]		1,768	
UNKNOWN			0
TOTAL OFFENSES			12,393

* denotes Not Applicable.

a. According to Department of Public Safety, Crime Reporting Unit. These arrests may have been made for status offenses occurring before these youth attained majority or for offenses so designated which do apply to adults.

b. According to state sources, violations of municipal ordinances (other than traffic violations) are the largest group represented in this category, which also includes curfew violators, runaways, and possibly even some less serious assaults. The offenses included in this category are specific to Massachusetts and may vary slightly from the offenses included in this category in other states and in the appendix.

Table 22-10 provides a summary of the number of cases reported in the preceding tables concerning total referrals to adult courts in 1978; the number selected for Phase II investigation; and findings concerning conviction and confinement practices applicable to these youth. Due to the limited amount of data available from local sources, only the state-supplied information is reflected in this table.

TABLE 22-10. MASSACHUSETTS: SUMMARY OF TABLES, 1978 (BY LEGAL MECHANISM)

	Judicial Waiver[a]	Age of Jurisdiction
Total Referrals to Adult Courts in 1978 (Table 22-1A)	33	12,393
Total Referrals Selected for Phase II (Table 22-8)	33[b]	12,393
Total Referrals Resulting in Convictions	*	*
Total Convictions Resulting in Sentences of Confinement	*	*

* denotes Not Available.

a. Local sources from 12 of the 14 counties reported a total of 57 judicial transfers in 1978, which did not correspond with the state supplied data in this table. Tables 22-3 to 22-6 reflect 1979 data.

b. Not reported in a tabular display.

It should be again noted that data regarding youth tried in adult courts for traffic violations due to the concurrent jurisdiction provision were not available from any county or state source in Massachusetts.

Little descriptive information about juveniles who were judicially transferred to adult courts in 1978 can be given due to the lack of and conflict between available data from state and local sources. It is pertinent to note that the two sources of data both reflect a low rate of judicial transfer (0.326 and 0.563) per 10,000 eight to 17 year olds.

Table 22-11 presents a summary of data for judicial transfers in 1979. All of the transferred youth were males; the majority were 16 years of age and most were white. Judicial transfer was reserved for only youth charged with serious personal offenses or who were chronic offenders--80 percent were charged with personal offenses. Nearly all of the transferred youth were found guilty; most of those persons convicted were sentenced to state adult corrections facilities.

TABLE 22-11. MASSACHUSETTS: SUMMARY OF TABLES, 1979 (BY LEGAL MECHANISM)

	Judicial Waiver
Total Referrals to Adult Courts in 1979 (Table 22-3)	45
Total Referrals Resulting in Convictions (Table 22-6)	28

The Uniform Crime Report data reflects that 91 percent of the 17 year olds arrested in 1978 were males and were predominately charged with nonpersonal offenses, with 48 percent of those being for public order offenses. Data on youth in adult courts due to traffic violations, through the concurrent jurisdiction mechanism, were not available.

RESULTS OF ON-SITE INTERVIEWS

In 1980, personal interviews were conducted in four sites in Massachusetts with over 30 people, including juvenile and criminal court judges, prosecutors, defense attorneys, correctional personnel, advocates, and police officers. They were questioned about the present system for referring youth to adult courts, their perceptions of the advantages and disadvantages of the current process, and what changes need to be made to improve their system. These perceptions are important for gaining a fuller understanding of past and present practices for trying youth under 18 years of age as adults in Massachusetts. Even when some of these perceptions do not coincide with empirical findings, their existence helps to illuminate some of the problems encountered there.

Subsequent to our on-site interviews, the Governor appointed a task force to review the juvenile code. This case study does not include reports and recommendations resulting from the Governor's task force.

Perceived Effects on the Court System of Trying Youth as Adults

There was consensus among the respondents that there was no effect on the criminal courts of trying transferred youth as adults because of the small number of cases. There were several different perceptions, however, about the effects on the juvenile courts. Some respondents felt that because so few youth are judicially transferred, transfer cases have no effect on the workload of the juvenile courts. However, other respondents suggested that because the juvenile transfer cases take months to complete and include many hearings, the effects on the court resources far exceed the number of actual cases transferred. In addition, a few respondents pointed out that there are several times the number of cases being considered for judicial transfer than are actually transferred. This same point has been made in a couple of studies of the Massachusetts juvenile justice system.[43] Therefore, the number of actual transfers cannot be looked at to determine the actual staff time spent in preparation for and participation in transfer considerations.

Another perspective expressed in Massachusetts was that, considering limited staff, physical facilities, and funds available, the removal of these youth from juvenile jurisdiction permits the concentration of resources on more receptive clients.

When the questions of the treatment of 17 year olds were raised with respondents, most could not visualize these adults within the juvenile system. It must be remembered that 17 year olds have been statutorily defined as adults in Massachusetts since 1906, when the first comprehensive juvenile statute was enacted. One respondent stated that the juvenile courts were unprepared to deal with large numbers of 17 year olds, should a transfer of jurisdiction to juvenile courts over these youth ever be enacted. When changes to the process of trying 17 year olds were suggested by the respondents, it was generally stated that some type of youthful offender program for 17 to 21 year olds should be developed within the adult system.

Perceived Effects on the Corrections System Of Trying Youth as Adults

There has been a great deal of interest in Massachusetts on the effect judicial transfer has on juvenile detention and corrections, an interest reflected in the case study interview responses. It is generally accepted that this effect is a very significant one. The issue of secure placements within the Department of Youth Services has been a source of controversy since the closing of most of the secure institutions in the early 1970s. Much recent interest has also been stimulated by Mark E. Newell's study, The Bindover Problems In Massachhsetts and Delinquent Justice, a study of Juvenile Detention Practices in Massachusetts by the Massachusetts Advocacy Center.[44]

Newell states that judicial transfer affects DYS in several ways.

- There is pressure to develop more secure treatment facilities beyond what is considered necessary by DYS.

- Scarce detention beds are filled for long periods of time with juveniles awaiting Part B hearings. Pressure to increase the number of detention beds results.

- The staff time and resources expended on preparing analyses of the youth's likelihood of rehabilitation for each Part B transfer hearing is a significant drain on DYS.

- It takes the placement decision out of the hands of DYS and places it, at least in a shared capacity, with the courts.

Youth awaiting Part B of the transfer hearing are being held in secure detention facilities for long periods of time. Newell reports that, in 1978, judicial transfers occupied an average of over seven detention beds per week out of 92 available beds.[45] He goes on to say that, while most juveniles stay in detention less than 45 days, youth awaiting transfer hearings stay in detention for months. Similarly, the Massachusetts Advocacy Center (Delinquent Justice) reports that "youngsters who are bound over for trial in adult court wait the longest in detention--without treatment or services. Six months to a year is not uncommon."[46]

Several views on secure placements were reflected among the case study respondents. The juvenile court judges interviewed thought that serious juvenile offenders were not being removed from the community after referral to DYS and argued that courts should be able to designate the juveniles who need to be incapacitated. On the other hand, the DYS officials interviewed responded that they have the legal authority to make placements after juveniles are committed to them and that they have the staff training and institutional processes to make appropriate decisions on secure placements.

The respondents thought that the judicial transfer issue had little effect on adult corrections because most juveniles bound over and convicted in adult courts were placed in DYS secure treatment programs. The belief that most are placed with DYS is not supported by the 1979 study by the Office of the Commissioner of Probation (see State Data Summary section). To reiterate, this study showed that in 1979, of the youth judicially transferred to and convicted in adult courts, only 16 percent were sentenced to DYS while 46 percent were sentenced to state adult corrections facilities. This data contradicts the respondents' perceptions. However, the 46 percent placed in adult facilities amounted to only 13 youth--therefore, ironically, the argument that judicial transfer is having little impact on adult corrections is also supported.

One issue of concern expressed by respondents from the Department of Corrections was the ever-present threat of physical or sexual abuse of the young offenders who are incarcerated in prisons. In an effort to prevent the incidence of this type of abuse, corrections officials have segregated the vulnerable offenders in protective areas or, in a few cases, have asked the court to transfer youth to juvenile facilities, even though they were judicially transferred and convicted as adults.

As with the perceived effects on the court system, there was little comment by respondents on the effect of handling 17 year olds as adults on the corrections system.

Perceived Effects on the Offenders Of Being Tried As Adults

While few youth are judicially transferred to adult court for trial, several times as many are detained and undergo a Part A transfer hearing.[47] For these youth, whether they are eventually tried in juvenile or adult courts, the stay in detention may be as long or longer than the time spent in a treatment program after adjudication. Several respondents thought that these periods of detention seem to satisfy the public demand for protection and punishment and allows the Department for Youth Services time to find a placement and to keep the individual in the juvenile system. However, many respondents and several reports condemned the lengthy periods of detainment during which the juveniles are not receiving rehabilitative services. Overall, very few respondents thought that youth should be sent to adult prisons. They expressed concerns about the danger of physical/sexual abuse, learning from older more sophisticated adult criminals, not receiving needed services, and the initiation of an adult criminal record. From this perspective, it would seem that the six months to a year spent in secure detention may be worth it to these youth, if they would otherwise ultimately be sentenced to an adult prison.

The threat of judicial transfer was seen by some to be primarily utilized as a tool to convince juveniles of the gravity of their behavior and to make the consequences of their behavior obvious. However, the actual deterrent effect has not been adequately substantiated, if--in fact--judicial transfer is primarily being utilized for this purpose.[48] It should be noted that it is primarily the district attorneys and not the courts who request the transfer hearings.

A few respondents suggested that there are more legal protections in adult courts and that this is an advantage for youth who are tried there. It is notable that the addition of jury trials and the right to bail in juvenile courts has minimized the differences in the procedures in the two courts. In addition, the concern with due process for the juvenile has produced a law which prohibits the judge who conducted the transfer hearing from sitting on the subsequent cases brought against the juvenile. However, the data certainly suggest that juveniles awaiting Part B transfer hearings are not released on bail. Whether the explanation of this lies in the inability of the youth to provide the money for bail or the relatively recent addition of bail as a juvenile court option (and thus has yet to be fully utilized) is not known.

Respondents mentioned that once youth have been convicted as adults, they acquire permanent criminal records. While legal prohibitions exist preventing the combination of the individual's past juvenile record with the adult criminal record, some respondents argued that the two pieces of information are available to the judges in one form or another. If this is so, youth tried as adults more than once may face very severe sentences, assuming lighter first-offender sentences.

Perceived Effects on the Public Of Trying Youth as Adults

Among the Massachusetts case study respondents, there were mixed perceptions about the incidence of serious juvenile crime. While some respondents thought that serious crime by juveniles was not increasing in Massachusetts, others insisted that it was. There was a consensus among these respondents, however, that the public was disenchanted with both the juvenile court and the Department of Youth Services. The perception was expressed that much of the public thinks that the juvenile justice system fails to make a moral impression on juveniles. A few respondents thought that this perception might result from the fact that the juvenile court processes are closed to the public. One of the respondents stated what was being expressed by most of the respondents--"the public wants these rough kids to get what they deserve."

A few of the case study respondents argued that there is a lack of understanding on the part of the public of how juvenile cases are handled, implying that there would be more public support, if the public understood the juvenile court process.

Perceptions of Factors to be Considered in the Referral of Youth to Adult Courts

The three most important factors that respondents thought should be considered in the transfer hearing were:

- The severity of the offense, including the harm to the victim, the manner in which it was committed, and whether a weapon was used.
- The juvenile's past record, including previous personal offenses, the frequency of and time between offenses, and whether the juvenile's record shows escalating offenses from less serious to more serious crimes.
- Lack of potential for rehabilitation, including programs previously tried, the juvenile's attitude toward services, and the assessment of needs and whether there are available services to meet those needs.

The juvenile's present offense, delinquency history, and previous attempts at rehabilitation seemed to be much more important in the rationale for judicially transferring youth to adult courts than psychiatric evaluations, social histories, perceived sophistication of the youth, and other social characteristics, in the views of the Massachusetts respondents. (See the Transfer Process subsection for the factors to be considered in Part B of the transfer hearing.)

Perceptions of Needed Changes in the Referral of Youth to Adult Courts

Almost all of the interviewees agreed that the juvenile courts should remain as separate courts in Massachusetts, and that serious and violent juvenile offenders should be the juvenile courts' number one priority.

The subject of secure facilities for juveniles was frequently raised during this case study. One respondent stated that there should be a juvenile prison with about 30 beds, for the few juveniles who need it, to be operated by the Department of Youth Services. This person thought that there are two other types of facilities needed for juveniles outside of the adult system: non-secure, community-based homes and medium-security detention facilities.

Another respondent suggested that an "educational jail" to truly educate and rehabilitate serious juvenile offenders is needed. The respondent conceded that high staff ratios and specialized personnel would cost money, but the present system is not doing the job. Also stressed was the fact that procedures in juvenile courts should be as speedy as possible, contrary to the six months to a year occurring in judicial transfer cases.

Handling youth up to 17 years of age within the juvenile system was approved by about half of the respondents. Some respondents did recommend raising the age to 18 in order to correspond with the voting age. However, nearly half suggested lowering the age so that only those youth under 16 years of age would be handled in the juvenile system. There were some suggestions for mandatory sentences for certain offenses. Also, focusing on the alleged offense, several respondents suggested excluding violent offenses from juvenile court jurisdiction. Some prosecutors and criminal court judges interviewed thought that the community would be better served if these offenses began in adult courts. In that way, youth charged with the most serious crimes would not end up in community programs. Overall, however, the judicial transfer procedure was thought to be the most acceptable mechanism for dealing with youth not amenable to treatment as juveniles.

Several suggestions were made to modify the transfer procedure, including making it less restrictive and providing for an appeal process by the prosecutor when the Part B hearing does not result in a transfer. Also, legislative action was suggested to prevent the delays between Part A and Part B of the transfer process, particularly in view of the extensive pretrial detention that is occurring. Generally, however, respondents were satisfied with the present jurisdictional limits of juvenile courts. They were less satisfied, however, with the dispositional alternatives for serious juvenile offenders within the juvenile system.

Since the Academy conducted interviews in Massachusetts in the Winter of 1980, the governor has appointed a task force to review the juvenile code. The task force considered issues related to lowering the age of maximum age of initial juvenile court jurisdiction to 16 and adding excluded offenses for serious offenses modeled after the New York 1978 Legislation. It has been reported that the task force report was completed shortly before this Massachusetts profile went to press.

SUMMARY AND CONCLUSIONS

The issues of interest and controversy regarding trying youth as adults in Massachusetts are all focused on the judicial transfer mechanism rather than the lower age of juvenile court jurisdiction. This is true for both the case study respondents and the various reports and studies on the state's juvenile justice system. This was not expected, given that the state legislature is considering a further lowering of the age of jurisdiction and the controversy such proposals have generated in other states.

The Academy staff had not anticipated learning that judicial transfer has generated so much controversy in Massachusetts when so few youth are transferred. All available data clearly indicate that judicial transfer is utilized only for youth charged with serious personal offenses or who are chronic offenders. Additionally, youth who are transferred are older youth, approaching the maximum age of juvenile court jurisdiction.

The difficulties with the legal mechanism appear to have resulted, in part, from the large number of transfer hearings which are held which do not result in transfer. These hearings were reported to cause significant hardships on the resources DYS has at its disposal. The small number of hearings resulting in transfers has also generated charges that juvenile court judges are primarily utilizing transfer as an attack on the authority of DYS to make the placement decision and as a threat to the juveniles (with critics of the mechanism maintaining that the threat has had little effect on subsequent criminal behavior).

The juvenile court judges clearly are interested in increasing the secure sentencing options for juveniles and in having a greater input into placing certain juveniles in secure confinement. This appears from our interviews to be for the most part a response to public pressure seeking increased confinement of serious juvenile offenders. It was not clear from the case study interviews the extent to which the judges' views were also statements of personal philosophy.

The evidence supporting the criticism that juvenile court judges are using transfer primarily as a threat to the juveniles is anecdotal in nature referring to the judges' courtroom behavior. These critics hastily dismiss the fact that it is primarily the district attorneys who request the transfer hearings. The large number of transfer hearings not resulting in transfer to adult courts may well be more of an indicator of the significant differences between the district attorneys and the juvenile court judges on the criteria (or what should be the criteria) for transferring youth for trial as adults. It would be helpful, in resolving this question, to know what characteristics--if any--distinguish the cases which were transferred after a hearing from those which were not.

Of greater concern to the case study respondents than the proportion of hearings resulting in transfer, was the amount of time juveniles are detained awaiting the Part B hearing. These detainments are frequently for longer periods of time than the subsequent sentences (when convicted) and are periods during which the juveniles are not receiving adequate treatment services. The long periods may also be an abridgement of the juveniles' right to a speedy trial. The long periods of detainment raise many important questions:

- What percentage of the juveniles involved in transfer hearings are not released on bail?
- Is indigence the reason so many remain in detention?
- What is the relationship between the length of stay in detention and the subsequent decision on whether to transfer youth to adult courts?
- What is the relationship between lengthy detainments and the conviction and incarceration rates in juvenile or adult courts?

Unfortunately, all of these issues are beyond the scope of this study.

Despite the concern about the long periods of detainment, new juvenile justice initiatives in Massachusetts only touch on the issue tangentially. These initiatives include:

- Lowering the maximum age of juvenile court jurisdiction to 16;
- Excluding youth charged with violent personel offenses from juvenile court jurisdiction; or, alternatively,
- Increasing the number of secure placements within DYS and developing additional treatment programs for violent juveniles.

Each of these would have many, albeit different, implications for the juvenile justice system in Massachusetts. It is not clear, however, the extent to which each would ameliorate the problem of long periods of detainment or the issues related to the conflict between DYS and the judges.

FOOTNOTES

1. 1870 Massachusetts Acts, Chapter 359, Sections 11 and 12.
2. 1906 Massachusetts Acts, Chapter 413, Section 1; Chapter 489, Sections 1 and 4.
3. "Bindover" is the term commonly used in Massachusetts for judicial transfer (waiver). However, this profile will use the terminology of "judicial transfer", consistent with the language used in the statutes.
4. 1906 Massachusetts Acts, Chapter 413, Section 11.
5. 1933 Massachusetts Acts, Chapter 196, Section 1.
6. 1948 Massachusetts Acts, Chapter 310, Sections 7 and 12.
7. 1948 Massachusetts Acts, Chapter 310, Section 3.
8. 1960 Massachusetts Acts, Chapter 353, Sections 1 and 3.
9. 1965 Massachusetts Acts, Chapter 659, Section 2.
10. Information provided by state sources.
11. Metcalf v. Commonwealth, 156 N.E. 2d 649 (1959).
12. Commonwealth v. Chase, 202 N.E. 2d 300 (1964).
13. Nassar v. Commonwealth, 171 N.E. 2d 157 (1961).
14. Supra, note 11.
15. D'Urbano v. Commonwealth, 187 N.E. 2d 831 (1963).
16. Joyner v. Commonwealth, 260 N.E. 2d 664; 358 Massachusetts 660 (1970).
17. Commonwealth v. Roberts, 285 N.E. 2d 919 (1972); Kent v. United States, 383 U.S. 541 (1966); see also, Commonwealth v. White, 311 N.E. 2d 543 (1974); and Commonwealth v. Franklin, 318 N.E. 2d 469 (1974).
18. Commonwealth v. A Juvenile, 296 N.E. 2d 194 (1973).
19. Massachusetts General Law Annotated, Chapter 218, Section 1.
20. In re Juvenile, 306 N.E. 2d (1974).
21. Commonwealth v. White, 311 N.E. 2d 543 (1974).
22. Commonwealth v. Franklin, 318 N.E. 2d 469 (1974).
23. Stokes v. Commonwealth, 336 N.E. 2d 735 (1975).
24. A Juvenile v. Commonwealth, 347 N.E. 2d 677 (1976).
25. A Juvenile v. Commonwealth, 374 N.E. 2d 1351 (1978).
26. Connaughton v. District Court of Chelsea, 356 N.E. 2d 1221 (1976).
27. Massachusetts General Laws Annotated, Chapter 119, Section 55a.
28. Delinquent Justice: Juvenile Detention Practice in Massachusetts, a report by the Massachusetts Advocacy Center (Task Force on Children Out of School, Inc., 1980), p. 48.
29. Chapter 478 of the Acts of 1978.
30. Massachusetts General Laws Annotated, Chapter 119, Section 52.
31. Massachusetts General Laws Annotated, Chapter 119, Section 61.
32. Ibid.
33. Ibid.
34. Massachusetts General Laws Annotated, Chapter 119, Section 74.
35. Massachusetts General Laws Annotated, Chapter 119, Section 83.
36. Delinquent Justice, supra note, 28, p. 88.
37. Mark E. Newell, The Bindover Problem in Massachusetts (a report prepared for the Massachusetts Department of Youth Services, John F. Kennedy School of Government, May, 1979), referring to a study reported in an unpublished paper by Carl Oxhelm III. p. E-4.
38. Massachusetts General Laws Annotated, Chapter 119, Section 83.

39. Massachusetts General Laws Annotated, Chapter 120, Section 15.

40. Source: The Department of Youth Services.

41. Marjorie Brown Roy and Rachel Sagan, *Juvenile Bindovers in Massachusetts: 1979* (a report by the Commonwealth of Massachusetts, Office of the Commissioner of Probation, Boston, December 15, 1980).

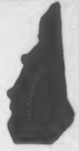
42. Newell, *supra*, note 37; Roy and Sagan, *supra*, note 39.

43. Newell, *supra*, note 37; *Delinquent Justice*, *supra*, note 28.

44. Newell, *supra*, note 37, p. 20; *Delinquent Justice*, *supra*, note 28, p. 2.

45. Newell, *supra*, note 37.

46. Delinquent Justice, supra, note 41, pp. iii and iv.



NEW HAMPSHIRE PROFILE

ACKNOWLEDGMENTS

The Academy extends its gratitude to the personnel of the prosecutors' offices and the district and superior courts for their assistance in the data collection effort in New Hampshire. Special thanks are also extended to Donald R. Hunter, Legislative Research Assistant, Office of Legislative Services, and Michael F. Sullivan, Executive Director, New Hampshire Crime Commission, for reviewing the New Hampshire profile. In addition, the Academy expresses its appreciation to the many other state and local officials who provided the necessary data.

METHODOLOGY

Academy staff conducted telephone interviews with the juvenile court staff in every district and municipal court in New Hampshire, requesting Phase I frequency data on youth judicially certified to adult courts and youth requesting their own judicial transfer to adult courts in 1978. If the judicial certification data were not available from court staff, the county prosecutor's office was contacted.

Phase II data--age, sex, race, offense, dispositions and sentences of those convicted--were generally available in the most populous ten percent of the counties (one county) and in the New Hampshire counties where the certification Phase I frequency was five or more youth. An additional county was included for Phase II investigation due to the availability of data.

Efforts to collect data on youth tried in adult courts due to excluded traffic, aeronautics, boating, and hunting offenses were rarely successful. Only two courts were able to provide this information.

COURT ORGANIZATION

The highest courts of general trial jurisdiction in New Hampshire are the superior courts. These courts have original jurisdiction over all appeals in criminal cases from municipal and district courts as well as over cases where a jury trial has been requested. These are the only courts that have trial by jury and the only courts to hear felony cases. Superior courts convene in ten locations throughout the state.

New Hampshire's 41 district courts have original jurisdiction in criminal nonjury trials for misdemeanors and violations, probable cause hearings in felony prosecutions, bail hearings, issuance of search and arrest warrants, and civil nonjury trials.

In 1978, municipal courts had concurrent jurisdiction with district courts over most functions.

During 1978 in New Hampshire, cases involving juveniles under the age of 18 were initially handled in the juvenile sessions of district or municipal courts. However, youth 16 years of age or older charged with violations of motor vehicle laws, aeronautics laws, boating laws, or hunting laws were routinely tried in adult courts.[1] The district and municipal courts' juvenile sessions will hereafter be referred to as juvenile courts.

The 1979 Reform Act, effective August 22, 1979, changed the responsibilities of the municipal courts in New Hampshire. They no longer have juvenile jurisdiction. Since 1964, when the district courts were established (New Hampshire Revised Statutes Annotated, Section 502-A), the municipal courts have decreased in number through death or retirement of the justices or through court reconstitution as district courts.

An overview of New Hampshire's courts and their jurisdiction over juveniles in 1978 appear below.

NEW HAMPSHIRE: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic[a]
District Courts (Juvenile Sessions) Municipal Courts (Juvenile Sessions)	Superior Courts	District Courts Municipal Courts

a. Youth 16 years old or older charged with violations of motor vehicle laws, aeronautics laws, boating or hunting laws are tried in adult courts. Juveniles under 16 years of age, are handled in juvenile courts for such offenses.

TRANSFER PROCESS

In New Hampshire, the initial age of juvenile court jurisdiction extends to 18 years of age. Juveniles under the age of 18 may be tried in adult courts through to two legal mechanisms.

Judicial Waiver

Youth under 18 who are charged with offenses which would constitute felonies if committed by an adult may, after a hearing in juvenile courts, be judicially certified to the superior courts for trial.[2] The juvenile court judges must use the Kent factors in making a decision to waive jurisdiction and certify youth to adult courts.[3] Generally, the county attorneys initiate the judicial certification process by requesting a juvenile court hearing. In addition, individuals charged with any offense committed after reaching age 17 may elect to be tried as adults in the appropriate adult courts without a certification hearing in juvenile courts.[4]

New Hampshire statutes also include the provision that any youth who have been certified to the superior courts, have been convicted in that court, and who are subsequently charged with another criminal offense, must be automatically tried as adults in superior courts.[5]

The 1979 Reform Act, effective after the data collection period of this study (August 22, 1979), instituted two changes in the New Hampshire certification process. The factors to be considered in the certification hearing were formally codified, including the transfer standards taken directly from State v. Smagula, note 3. As stated in the Reform Act, the criteria in determining whether a case should be transferred are:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires transfer.
2. The aggressive, violent, premeditated, or willful nature of the alleged offense.
3. Whether the alleged offense was committed against persons or property.
4. The prospective merit of the complaint.
5. The desirability of trial and disposition of the entire offense in one court if the minor's associates in the alleged offense were adults who will be charged with a crime.
6. The sophistication and maturity of the minor.

7. The minor's prior record and prior contacts with law enforcement agencies.
8. The prospects of adequate protection of the public, and the likelihood of reasonable rehabilitation of the minor through the juvenile court system.[6]

In addition, judges who conduct transfer hearings cannot participate in any subsequent proceedings relating to the offense or conduct alleged in the delinquency petition if the minor or counsel object to such participation.[7]

Excluded Offenses

When youth 16 years of age or older are charged with violations of motor vehicle, aeronautics, boating, or hunting laws in New Hampshire, they are automatically tried in adult courts due to an excluded offense provision. These cases were normally heard in the adult sessions of either district or municipal courts in 1978 (note 1).

CASE LAW SUMMARY

A search of litigation since 1950 has shown that cases concerning the meaning of the age criterion used by the New Hampshire legislature to define the jurisdictional scope of juvenile court has frequently been heard by the New Hampshire Supreme Court. In *State* v. *Lemelin*, the supreme court held that juvenile courts had no jurisdiction over an 18 year old who was charged with the commission of an offense prior to his 18th birthday.[8] Fifteen years later, in *State* v. *Scoville*, the court upheld the constitutionality of the differential age criterion then in effect between delinquent and status offenders by finding that this classification of individuals was not arbitrary and had relevance to the purpose of the legislation.[9] In *State* v. *Bill* and *State* v. *Gomes*, the New Hampshire Supreme Court resolved the interpretation problems which arose from statutory provisions which specified conflicting maximum ages of initial juvenile court jurisdiction by stating that juvenile court has jurisdiction over juveniles whose delinquent acts were committed before their 18th birthday.[10]

The supreme court was required to harmonize seemingly contradictory statutory provisions in *State* v. *Doe*, wherein the Court held that any persons over 16 years of age and charged with a motor vehicle law violation was not within the jurisdiction of juvenile court (while a juvenile charged with a crime was within juvenile jurisdiction).[11] The court ruled that a youth over 16 years of age charged with a misdemeanor traffic offense could be tried as an adult.

In *State* v. *Smagula*, the New Hampshire Supreme Court upheld the constitutionality of the certification statute by incorporating the requirements of *Kent* v. *United States* into the statute.[12] Further, the court declared that additional guidance could be obtained by the trial court by referring to the criteria set forth in the appendix to the *Kent* opinion.

CORRECTIONS INFORMATION

In New Hampshire, the state prison, housing adult offenders, is the responsibility of a Board of Trustees.

Juvenile services in New Hampshire, such as institutions, detention, and residential centers, are the responsibility of the Youth Development Center, which also reports to a Board of Trustees. Individuals tried as juveniles can be committed to the Youth Development Center by court order after being adjudicated delinquent. These juveniles are given an intake evaluation to determine if a community placement is appropriate or if the juvenile should be sent to the Youth Development Center. After delinquent juveniles have reached age 17, juvenile courts may commit these individuals to the Youth Development Center, house of corrections, jail, or state prison for all or any part of their minority.[13] Juveniles may not be committed to adult facilities unless separated from adult offenders, however.[14] In the 1979 Reform Act, these last two provisions were clarified to state that juveniles found delinquent after the 17th birthday can be committed to the house of correction or jail for *no greater* term than an adult committed for the same offense. The term cannot extend past the 19th birthday. In addition, during his minority the juvenile cannot be confined in such facilities unless separated from adults.[15] In juvenile facilities, any troublesome residents are segregated to a more secure cottage on the groups.

Judicially certified youth (as well as adult offenders) who are convicted of a felony and given a sentence of incarceration are committed to the New Hampshire State Prison. Youth certified as adults cannot be sent to the Youth Development Center for juveniles. Youth who request their own transfer to adult courts and who are convicted in district or municipal courts may be incarcerated in local houses of correction or jails. Both groups of youth do not have to be separated from offenders over 18.

Juveniles convicted in juvenile courts may not be transferred to an adult facility. Youth tried as adults and assigned to the state prison may not be administratively transferred to a juvenile facility.

STATE DATA SUMMARY

There are several methods that may be used to prosecute juveniles in adult courts in New Hampshire. First, any youth may be judicially certified when charged with a felony. Second, youth 17 years old, having been charged with any type of offense, may request trial be held in the appropriate adult court. Third, youth certified to criminal courts and convicted will be automatically tried as adults for all subsequent offenses (once waived, always waived). Finally, traffic, boating, and hunting violations by youth 16 years of age or older are excluded offenses and are routinely handled in adult courts.

Table 30-1 shows the number of judicial certifications reported, and estimated juvenile population, by county, in 1978. Youth tried for excluded traffic, aeronautic, boating, and hunting offenses in adult courts are reported upon in a separate section of this profile. It should also be noted that 17 year olds who requested to be tried in adult courts are included in the judicial certification data.

As shown in Table 30-1, during 1978 25 juveniles were judicially transferred to adult courts in New Hampshire either through the certification process or upon the youth's request. Of these, 48 percent (12) were from two counties, Strafford and Hillsborough. Three of the ten counties reported no transfers in 1978. Among the seven counties reporting judicial transfers, only Strafford and Hillsborough Counties reported that some youth requested their transfer; identifying two and one cases, respectively.

TABLE 30-1. NEW HAMPSHIRE: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Age 8-17)[a]	Judicial Waiver	
		Cases	Rate[b]
Belknap	6,260	1	1.597
Carroll	3,841	0	0.000
Cheshire	9,892	2	2.022
Coos	6,599	0	0.000
Grafton	8,857	0	0.000
Hillsborough	45,710	6[c]	1.313
Merrimack	15,155	2	1.320
Rockingham	31,295	4	1.278
Strafford	13,389	6[c]	4.481
Sullivan	5,931	4	6.744

TABLE 30-1. (Continued)

County	Juvenile Population (Age 8-17)[a]	Judicial Waiver Cases	Judicial Waiver Rate[b]
Total	146,929	25	1.702

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

c. One youth in Hillsborough County and two youth in Strafford County requested transfer to adult courts.

Table 30-2 shows the relationship between the state and the three counties where Phase II data were sought. In New Hampshire, Hillsborough County was a Phase II county due to population size, as well as meeting the second criteria of over five transfers in 1978. Strafford County was also selected for meeting this latter criteria. Due to availability of data, Merrimack County was included as third Phase II county. The three Phase II counties comprised 56 percent (14) of the state's total transfers and contained 51 percent of the state's juvenile population.

TABLE 30-2. NEW HAMPSHIRE: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17)[a]	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	146,929	10	25[b]
Selected for Phase II Investigation	74,254	3	14[b]
Percentage of State Selected for Phase II Investigation	51%	30%	56%

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Three of these youth requested their own transfer.

Table 30-3 displays the demographic data on the 14 youth who were certified to adult courts in the three Phase II counties. Seventeen year olds had the highest representation, with 79 percent (11) of the Phase II totals. All 14 transfers were white males.

TABLE 30-3. NEW HAMPSHIRE: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age				Sex		Race	
		0-15	16	17	18+	Male	Female	White	Minority
Hillsborough	6	1	0	5	0	6	0	6	0
Merrimack	2	0	1	1	0	2	0	2	0
Strafford	6	0	1	5	0	6	0	6	0
State Phase II Total	14	1	2	11	0	14	0	14	0

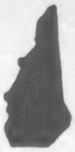


Table 30-4 reflects charges against youth tried in adult courts. Forty percent (four) were for personal offenses (murder, manslaughter, and robbery) and fifty percent (five) were for property offenses (all burglaries), among the ten transfers for which offenses were reported. The remaining known offense was in the public order category (criminal mischief). Considering this latter charge, it should be recalled that two of the six transferred youth in Strafford County requested their own transfer, which is an option for 17 year olds charged with any type of offense, including misdemeanors. Figure 30-1 graphically depicts the percentages of these offense categories, including the unknown offenses.

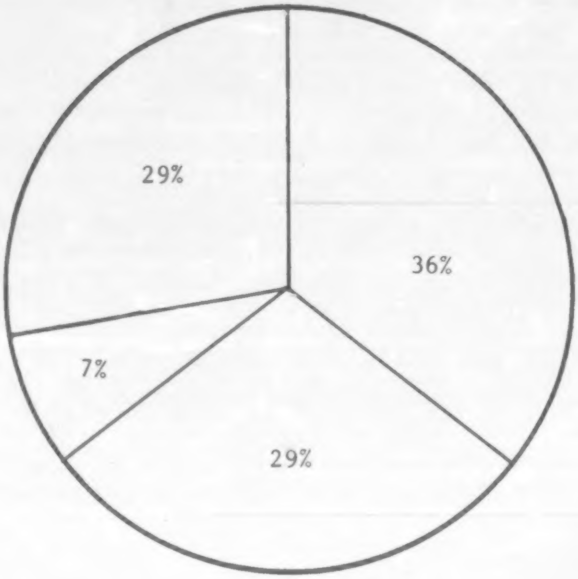
TABLE 30-4. NEW HAMPSHIRE: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

		Offenses[a]										
County	Total Waivers	Murder/ Man-slaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Hillsborough	6	1	*	1	*	*	*	*	*	*	*	4
Merrimack	2	0	0	2	0	0	0	0	0	0	0	0
Strafford	6	0	0	0	0	0	0	5	0	1	0	0
State Phase II Total	14	1	0	3	0	0	0	5	0	1	0	4

* denotes Not Available.

a. Only most serious offense per individual listed.

FIGURE 30-1. NEW HAMPSHIRE: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES BY (OFFENSE CATEGORY) IN 1978



Offenses[a]

Personal	29%
Property	36%
Public Order	7%
Other General	0%
Unknown	29%

N= 14

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 29 percent of all offenses in the Phase II counties. Percent totals more than 100 due to rounding-off.

Judgments of the 14 transferred cases are shown in Table 30-5. Where judgment information was known, 11 of 12 individuals were found guilty, and one individual was reported to be returned to juvenile court. The two cases in the "other" category were continued or held open.

TABLE 30-5. NEW HAMPSHIRE: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

		Judgments				
County	Total Waivers	Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other[a]
Hillsborough	6	0	0	0	6	0
Merrimack	2	0	0	0	0	2
Strafford	6	0	0	1	5	0
State Phase II Total	14	0	0	1	11	2

a. Cases held open or pending.

As seen in Table 30-6, sentence data were available for only five of the 11 youth found guilty. All five youth in Strafford County were sentenced to probation.

TABLE 30-6. NEW HAMPSHIRE: SENTENCE REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY SENTENCE TYPE) IN 1978

County	Total Convictions	Sentence Types Fined	Probation	Jail	State Adult Corrections Facilities	Other	Unknown
Hillsborough	6	*	*	*	*	*	6
Strafford	5	0	5	0	0	0	0
State Phase II Total	11	0	5	0	0	0	6

* denotes Not Available.

Table 30-7 provides a summary of the number of cases reported in the preceding tables concerning total referrals to adult courts; the number selected for Phase II investigation; and findings concerning conviction and confinement practices applicable to these youth. Fourteen of the 25 judicial transfers reported were subject to Phase II investigation. Eleven of these Phase II cases were of youth determined to be guilty. Only five sentences were available, all of which were for periods of probation.

TABLE 30-7. NEW HAMPSHIRE: SUMMARY OF TABLES (BY LEGAL MECHANISM)

	Judicial Waiver
Total Referrals to Adult Courts in 1978 (Table 30-1)	25
Total Referrals Selected for Phase II (Table 30-3)	14
Total Referrals Resulting in Convictions (Table 30-6)	11
Total Convictions Resulting in Sentences of Confinement	*[a]

* denotes Not Available.

a. At least five of the 11 convicted youth received probation sentences. Sentencing data were not available for the other youth.

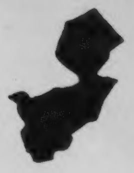
In summary, 79 percent of the juveniles transferred in Phase II counties were 17 years old and all were white males. Fifty percent of the known charges in Phase II counties were for property offenses and 40 percent were personal (all violent) offenses. At the time of the survey, 92 percent of the Phase II cases were found to be guilty and at least five youth were sentenced to probation.

Routinely Handled Traffic Offenses

The number of youth routinely tried in adult courts in 1978 due to excluded traffic, aeronautic, boating, and hunting offenses were rarely available from New Hampshire courts. Only one municipal court and one district court in the entire state were able to provide this information, reporting a total of 306 cases of youth between 16 and 18 years of age.

FOOTNOTES

1. New Hampshire Revised Statutes Annotated, Sections 169:2(II) and 169:30(II).
2. New Hampshire Revised Statutes Annotated, Section 169:21.
3. State v. Smagula, 377A2d 608 (1977).
4. New Hampshire Revised Statutes Annotated, Section 169:21-b.
5. New Hampshire Revised Statutes Annotated, Section 169:21-c.
6. New Hampshire Revised Statutes Annotated, Section 169-B:24.
7. New Hampshire Revised Statutes Annotated, Section 169-B:28.
8. State v. Lemelen, 144 A.2d 916 (1958).
9. State v. Scoville, 304 A.2d 366, 113 N.H. 161 (1973).
10. State v. Bill, 347 A.2d 445, 115 N.H. 605 (1975); State v. Gomes, 364 A.2d 1260 (1976).
11. State v. Doe, 365 A.2d 1044 (1976).
12. State v. Smagula, 377 A.2d 608 (1977).
13. New Hampshire Revised Statutes Annotated, Section 169:14.
14. New Hampshire Revised Statutes Annotated, Section 169:8.
15. New Hampshire Revised Statutes Annotated, Section 169-B:19(III).



NEW JERSEY PROFILE

ACKNOWLEDGMENTS

The Academy expresses its appreciation to Cornelius P. Sullivan, Burlington County Prosecutor, and Wayne Christian, Project Director, Court Unification, Administrative Office of the Court, for their assistance in the data collection effort. Appreciation is also owed to Wilma E. Solomon, Planning Supervisor, State Law Enforcement Planning Agency, for reviewing the New Jersey profile. In addition, the Academy extends appreciation to the many other state and local officials who provided the necessary data.

METHODOLOGY

Frequency data (Phase I information) on judicial waivers, by county, were obtained via telephone interviews conducted by Academy staff with the prosecutor's office in each of the counties. Phase II questions on age, sex, race, offenses, dispositions, and sentences of youth in adult courts were asked of all counties in the state because of the small number of counties and the availability of data. Nineteen of the 21 counties were able to provide most of the requested data. Data on traffic cases for 17 year olds were unavailable.

COURT ORGANIZATION

New Jersey's highest courts of general jurisdiction are the superior courts. Prior to December 7, 1978, each of the state's 21 counties had a superior court located within it. These courts had three divisions at that time: (1) the Law Division; (2) the Appellate Division; and (3) the Chancery Division. The law courts had general jurisdiction in criminal cases. Also, the 21 county courts had criminal jurisdiction within the county. Lesser courts included 21 county district courts, which had lesser civil and criminal jurisdiction; juvenile and domestic relations courts; and municipal courts.

Before court reorganization in 1978, exclusive jurisdiction over juvenile delinquency and juveniles in need of supervision was held by the 21 Juvenile and Domestic Relations Court with an office in each county. These courts will hereafter be referred to as juvenile courts. Juveniles under 17 years old cited for traffic offenses are handled in juvenile courts. Traffic offenses committed by youth 17 years of age generally are handled by the 528 municipal courts along with adults who violate the same laws.

Effective December 7, 1978, court organization changed in New Jersey, with county courts becoming part of the superior court system.[1] In addition, the Law and Chancery Divisions of the superior courts were merged into one division, while the county district courts and the Juvenile and Domestic Relations Courts became two additional divisions of that higher court system. Municipal courts remained as they were prior to the reorganization. However, the county district courts now have concurrent criminal and quasi-criminal jurisdiction with the municipal courts.

An overview of New Jersey's courts by their jurisdiction over juveniles appears below.

NEW JERSEY: COURT JURISDICTION OVER JUVENILES IN 1978[a]

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic
Juvenile and Domestic Relations Courts	Law Division of Superior Courts	Juvenile and Domestic Relations Courts[b] Municipal Courts[c]

a. This chart reflects court organization in New Jersey for the first 11 months of 1978.

b. For youth under 17 years of age.

c. For youth 17 years of age and older.

TRANSFER PROCESS

The initial age of juvenile court jurisdiction in New Jersey extends to 18 years of age.[2] There are two major provisions under which youth under 18 years of age may be transferred to adult courts: judicial waiver and excluded offenses.

Judicial Waiver

The juvenile courts in New Jersey may, after a preliminary hearing, and without the consent of the juvenile, waive jurisdiction over a case and refer that case to the appropriate court and prosecuting attorney having jurisdiction.[3] Juveniles must be 14 years of age or older at the time of the charged delinquent act, and there must be probable cause to believe that the juveniles committed a delinquent act that would constitute homicide or treason if committed by an adult; or that they committed an offense against the person in an aggressive, violent, and willful manner; or that they committed a delinquent act under the Controlled Substances Act (and were not addicted to the narcotic drug at the time of the arrest). The courts must be satisfied that the adequate protection of the people requires such a waiver, and that there are no reasonable prospects for rehabilitation of the juveniles prior to their attaining the age of majority within the juvenile system. Also, there appears to be no statutory provision pertaining to judicial transfer of waived cases from adult courts back to juvenile courts.[4] In addition, upon request, juveniles, 16 years of age or older charged with delinquency, must be waived to the appropriate prosecuting attorney for trial in adult courts.[5]

Excluded Offenses

The second major provision bringing youth under age 18 into adult courts relates specifically to traffic offenses. Motor vehicle violations committed by youth 17 years old are tried in the adult municipal courts along with adult violators of the same laws.[6]

CASE LAW SUMMARY

After 1950, several important legal cases were heard by the New Jersey Supreme Court regarding issues related to waiver. Prior to the decision by the U.S. Supreme Court in Kent v. United States, the New Jersey Supreme Court resolved, on several occasions, issues that had been raised concerning the nature, scope, and requirements of a waiver hearing.[7] The major decision in this area was State v. Van Buren, wherein the New Jersey Supreme Court held that although statutes did not then expressly so provide, fairness required that a hearing be held prior to the juvenile court's waiver of jurisdiction.[8] Further, the court held that the hearing was nonadjudicatory in nature, and that the scope and conduct of such a hearing was left to the discretion of the juvenile judge. In addition, the court stated that the juvenile's capacity for rehabilitation was not the sole criterion, in that the welfare of society could be considered. Finally, the court held that the statute did not require that an express finding of probable cause be made.

Two years later, the New Jersey Supreme Court held, in Goodlet v. Goodman, that the decision in Van Buren, should only be applied to cases postdating that decision, and not retroactively to transfers occurring before Van Buren was heard.[9] In State v. Tuddles, the court further clarified the procedure to be followed by holding that the juvenile must be present at the hearing, and that counsel must be assigned by the court if the juvenile cannot retain one.[10] However, the court held, in State v. Loray, that denial of the right to counsel and the right to present evidence favorable to the juvenile did not necessarily require reversal of the criminal conviction.[11] Rather, the court held that returning the youth to juvenile court for purposes of determining the properness of the waiver was more appropriate. Finally, in State v. Lueder, the court held that the decision in Kent, would not be applied retroactively.[12]

In Application of Smigelski the New Jersey Supreme Court held that the juvenile's age at the time of the commission of the offense was determinative of the issue of which court has jurisdiction.[13] That is, juvenile court does not automatically lose jurisdiction when an individual reaches age 18 and, therefore, the age at arrest is normally irrelevant to the jurisdictional issue. The New Jersey Supreme Court has also held, in State v. Smith, that juvenile court procedures governing detention and questioning of juveniles apply until the determination to waiver has been made.[14]

CORRECTIONS INFORMATION

The New Jersey Department of Corrections has four divisions: adult corrections institutions, juvenile services, policy development, and administration. The Department of Corrections' responsibilities include all of the state's corrections institutions, supervision of community-based programs, and inspection of county and municipal detention facilities.

Persons of the age of 26 or above who are convicted of crimes of the first, second, or third degree are committed to state prison or the Correctional Institution for Women. Persons of the age of 26 or above who are convicted of crimes of the fourth degree who received terms of 12 months or more, except in counties with a penitentiary, are also committed to the Prison Complex or the Correctional Institution for Women. In counties with a penitentiary and for all sentences of less than one year, such individuals are confined in county facilities. Adult males under the age of 26 may be sentenced to the Youth Correctional Institution Complex rather than state prison.[15]

Juveniles who are adjudged delinquent may receive probation, or community placement with minimum security residential settings, or placed in a training school. Male juveniles adjudicated delinquent who are the age of 15 or over may be committed to the Youth Correctional Institution Complex. They are separated from adult offenders while there. Juveniles adjudged delinquent for any form of

homicide are sentenced to an indeterminate term in a juvenile facility. This placement continues until the paroling authority determines that such persons may be paroled.[16] The period of confinement and parole cannot exceed the maximum provided by law for such offenses committed by a person 18 years old or over.

Youth under 18 tried in adult courts may be sentenced to the Youth Correctional Institution Complex and are separated from juveniles adjudged delinquent. A youth under the age of 16 found guilty of a crime other than murder may be committed to a training school as a juvenile delinquent.[17]

Juveniles tried in juvenile court may, under special circumstances, be transferred to an adult institution.[18] Youth tried in adult courts and sent to adult facilities may be administratively transferred to juvenile institutions.[19] While this move is possible, it is the exception, since the need for such a transfer is usually evident prior to sentencing.

STATE DATA SUMMARY

There are two legal mechanisms by which juveniles appear in adult courts in New Jersey. First, after a hearing, juvenile courts can transfer jurisdiction to adult courts if the youth are 14 years of age or older and charged with a serious crime. Juveniles 16 years old and older may request their own transfer. Second, traffic offenders 17 years old are tried routinely in adult courts. Only jurisdiction waiver data were available in New Jersey.

In 1978, there were 84 youth judicially waived in New Jersey (see Table 31-1). Seventy percent of the waivers occurred in four counties (Camden, Essex, Hudson, and Passaic). Essex County, with the largest juvenile population, accounted for 32 percent (27) of the state total of waivers. Bergen and Middlesex Counties, the next most populous counties, reported zero and two waivers, respectively.

TABLE 31-1. NEW JERSEY: REFERRALS OF JUVENILES FROM JUVENILE TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases	Rate[b]
Atlantic	31,151	1	0.321
Bergen	142,632	0	0.000

TABLE 31-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases	Judicial Waiver Rate[b]
Burlington	68,088	2	0.294
Camden	88,252	9	1.020
Cape May	10,898	1	0.918
Cumberland	24,977	1	0.400
Essex	155,139	27 est	1.740
Gloucester	37,192	1 est	0.269
Hudson	88,550	8	0.903
Hunterdon	14,506	0	0.000
Mercer	53,411	1	0.187
Middlesex	105,985	2 est	0.189
Monmouth	95,831	2	0.209
Morris	77,127	5	0.648
Ocean	49,367	0	0.000
Passaic	77,942	15 est	1.925
Salem	11,660	0	0.000
Somerset	38,894	3	0.771
Sussex	19,674	1	0.508
Union	83,328	4 est	0.480
Warren	14,862	1	0.673
Total	1,289,466	84 est	0.651

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

Table 31-2 shows the relationship between Phase II counties and all counties in the state. Due to the small number of counties in the state, data were requested from all counties. Phase II data were unavailable from Cumberland County, and Essex County could only supply offense information. The table indicates that Phase II information was sought in all New Jersey counties on 100 percent of the 84 judicial waivers occurring in the state in 1978.

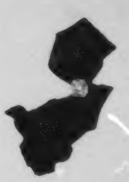


TABLE 31-2. NEW JERSEY: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17)[a]	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	1,289,466	21	84
Selected for Phase II Investigation	1,289,466	21	84
Percentage of State Selected for Phase II Investigation	100%	100%	100%

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

Table 31-3 gives a demographic breakdown--age, sex, race--of youth judicially waived. Forty-eight percent (27) were 17 years old; 87 percent (46) were males. Minority youth represented 55 percent (31) and white youth 45 percent (25) of the cases.

TABLE 31-3. NEW JERSEY: JUDICIAL WAIVERS TO ADULT COURTS (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age					Sex			Race		
		0-15	16	17	18+	Un-known	Male	Female	Un-known	White	Minor-ity	Un-known
Atlantic	1	0	1	0	0	0	1	0	0	0	1	0
Bergen	0	0	0	0	0	0	0	0	0	0	0	0
Burlington	2	0	1	1	0	0	2	0	0	2	0	0
Camden	9	1	4	4	0	0	8	1	0	2	7	0
Cape May	1	0	0	1	0	0	1	0	0	1	0	0
Cumberland	1	*	*	*	*	1	*	*	1	*	*	1
Essex	27	*	*	*	*	27	*	*	27	*	*	27
Gloucester	1	0	0	1 est	0	0	1 est	0	0	1 est	0	0
Hudson	8	2 est	2	4	0	0	7	1	0	5	3	0
Hunterdon	0	0	0	0	0	0	0	0	0	0	0	0
Mercer	1	0	0	1	0	0	1	0	0	1	0	0
Middlesex	2	0	1	1	0	0	2	0	0	1	1	0
Monmouth	2	0	0	2	0	0	2	0	0	0	2	0
Morris	5	0	5	0	0	0	0	5	0	3	2	0
Ocean	0	0	0	0	0	0	0	0	0	0	0	0
Passaic	15	2 est	9 est	4 est	0	0	13 est	*	2	1 est	14 est	0
Salem	0	0	0	0	0	0	0	0	0	0	0	0
Somerset	3	0	0	3	0	0	3	0	0	3	0	0
Sussex	1	0	0	1	0	0	1	0	0	1	0	0
Union	4	0	1 est	3 est	0	0	3 est	*	1	3 est	1 est	0
Warren	1	0	0	1	0	0	1	0	0	1	0	0
State Total	84	5	24	27	0	28	46	7	31	25	31	28

* denotes Not Available.

Offense data is displayed in Table 31-4. Eighty-eight percent (73) were personal offenses (murder, manslaughter, rape, robbery, assaults, and kidnapping). Property offenses, which included burglary and auto theft, represented seven percent (six) and public order offenses four percent (three). Public order offenses included drug and liquor violations.

TABLE 31-4. NEW JERSEY: JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

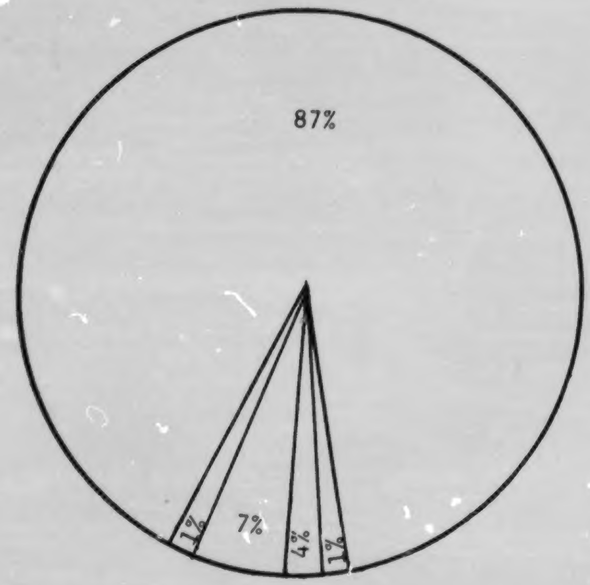
		Offenses[a]										
County	Total Waivers	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Atlantic	1	1	0	0	0	0	0	0	0	0	0	0
Burlington	2	0	0	1	0	0	0	0	0	0	1	0
Camden	9	3	0	0	1	1	1	2	0	1	0	0
Cape May	1	0	0	0	1	0	0	0	0	0	0	0
Cumberland	1	*	*	*	*	*	*	*	*	*	*	1
Essex	27	10	0	0	0	17	0	0	0	0	0	0
Gloucester	1	0	0	0	0	1 est	0	0	0	0	0	0
Hudson	8	1	0	1	4	0	0	0	1	1	0	0
Mercer	1	0	0	0	0	0	0	1	0	0	0	0
Middlesex	2	1	1	0	0	0	0	0	0	0	0	0
Monmouth	2	0	0	2	0	0	0	0	0	0	0	0
Morris	5	1	2	0	0	0	0	2	0	0	0	0
Passaic	15	2 est	2 est	8 est	0	2 est	0	0	0	1 est	0	0
Somerset	3	0	1	2	0	0	0	0	0	0	0	0
Sussex	1	0	0	0	0	1	0	0	0	0	0	0
Union	4	1 est	0	0	0	3 est	0	0	0	0	0	0
Warren	1	1	0	0	0	0	0	0	0	0	0	0
State Total	84	21	6	14	6	25	1	5	1	3	1	1

* denotes Not Available.

a. Only most serious offense per individual listed.

Figure 31-1 provides a graphic illustration of offenses associated with judicial waivers in New Jersey in 1978. The figure indicates that one percent of offenses were unknown, and among those which were reported, personal offenses accounted for the large majority of violations resulting in waiver, constituting 87 percent of the total. Property, public order, and other general offenses made small contributions to the total of 84, by accounting for seven percent or less of all violations.

FIGURE 31-1. NEW JERSEY: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses[a]

Personal	87%
Property	7%
Public Order	4%
Other General	1%
Unknown	1%

N = 84

---

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 79 percent of all offenses in the state.

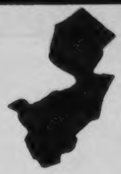


Table 31-5 represents the judgments of youth waived to adult courts. Based on the available data for 56 youth, 77 percent (43) were found guilty. One county reported referral back to juvenile court; and two cases were dismissed.

TABLE 31-5. NEW JERSEY: JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING COUNTIES (BY COUNTY AND BY JUDGMENTS) IN 1978

		Judgments					
County	Total Waivers	Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other[a]	Unknown
Atlantic	1	0	0	0	1	0	0
Burlington	2	0	0	0	2	0	0
Camden	9	0	0	0	9	0	0
Cape May	1	0	0	0	1	0	0
Cumberland	1	*	*	*	*	*	1
Essex	27	*	*	*	*	*	27
Gloucester	1	0	0	0	0	1	0
Hudson	8	0	0	1	4	3	0
Mercer	1	0	0	0	0	1	0
Middlesex	2	0	0	0	1	1	0
Monmouth	2	0	0	0	2	0	0
Morris	5	0	1	0	4	0	0
Passaic	15	0	1 est	0	13 est	1 est	0
Somerset	3	0	0	0	2	1	0
Sussex	1	0	0	0	1	0	0
Union	4	0	0	0	2 est	2 est	0
Warren	1	0	0	0	1	0	0
State Total	84	0	2	1	43	10	28

* denotes Not Available.

a. Pending and held open cases.

Table 31-6 shows the sentences of convicted youth. Of the 29 known cases, 26 (90 percent) were sentenced to incarceration, one to jail, and the remainder to state adult corrections facilities. Three (ten percent) received probation.

TABLE 31-6. NEW JERSEY: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING COUNTIES (BY COUNTY AND SENTENCE TYPE) IN 1978

County	Total Convictions	Sentence Types: Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other	Unknown
Atlantic	1	0	0	0	1	0	0	0
Burlington	2	*	*	*	1	*	*	1
Camden	9	0	0	0	9	0	0	0
Cape May	1	0	0	1	0	0	0	0
Hudson	4	0	1	0	3	0	0	0
Middlesex	1	0	0	0	1	0	0	0
Monmouth	2	0	0	0	2	0	0	0
Morris	4	0	2	0	2	0	0	0
Passaic	13	*	*	*	*	*	*	13
Somerset	2	0	0	0	2	0	0	0
Sussex	1	0	0	0	1	0	0	0
Union	2	0	0	0	2 est	0	0	0
Warren	1	0	0	0	1	0	0	0
State Total	43	0	3	1	25	0	0	14

* denotes Not Available.

Table 31-7 displays the sentence durations of youth sentenced to incarceration. Of the 14 known cases, 36 percent (five) received maximum sentences of over ten years. One youth received a life sentence. Fifty percent (seven) received indeterminate sentences. One youth received a maximum sentence of over five to ten years, and one received one year or less.

TABLE 31-7. NEW JERSEY: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

County	Total Confinements	Sentence Maximums: One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Atlantic	1	0	0	0	0	0	0	1	0	0
Burlington	1	0	0	0	0	0	1	0	0	0
Camden	9	*	*	*	*	*	*	*	*	9
Cape May	1	1	0	0	0	0	0	0	0	0
Hudson	3	0	0	0	1	1	1	0	0	0
Middlesex	1	*	*	*	*	*	*	*	*	1
Monmouth	2	0	0	0	0	2	0	0	0	0
Morris	2	*	*	*	*	*	*	*	*	2
Somerset	2	0	0	0	0	0	2	0	0	0
Sussex	1	0	0	0	0	0	1	0	0	0
Union	2	0	0	0	0	0	2 est	0	0	0
Warren	1	0	0	0	0	1	0	0	0	0
State Total	26	1	0	0	1	4	7	1	0	12

* denotes Not Available.

Table 31-8 provides a summary of some of the preceding tables on judicial waiver. The table indicates that all 84 waivers occurring in the state in 1978 were selected for Phase II investigation. Judgment information was available on 56 of these waivers, and 43 of them, or 82 percent, resulted in conviction. Confinement information was available on 29 of these 43 convictions, 26 of which resulted in incarceration.

TABLE 31-8. NEW JERSEY: SUMMARY OF TABLES (BY LEGAL MECHANISM)

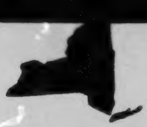
	Judicial Waiver
Total Referrals to Adult Courts in 1978 (Table 31-1)	84
Total Referrals Selected for Phase II (Table 31-3)	84
Total Referrals Resulting in Convictions (Table 31-6)	43
Total Convictions Resulting in Sentences of Confinement (Table 31-7)	26

In summary, 87 percent of the 84 youth judicially waived in 1978 were males, and 55 percent of these youth belonged to minority groups. Forty-eight percent were 17 years old, and only nine percent were under 16 years old. Eighty-seven percent of the youth waived were charged with offenses against persons. Seventy-seven percent of known judgments resulted in conviction, and where confinement data were available, 90 percent of the convicted youth were incarcerated subsequent to trial in adult courts.

FOOTNOTES

1. State Referendum, November 7, 1978, which amended the New Jersey Constitution, Article XI, Section 6, effective December 7, 1978.
2. New Jersey Statutes Annotated, Section 2A:4-43(a). See also State v. Van Buren, 15 A.2d 649; 29 N.J. 548 (1959).
3. New Jersey Statutes Annotated, Section 2A:4-48.
4. New Jersey Statutes Annotated, Section 2A:4-47.
5. New Jersey Statutes Annotated, Section 2A:4-49.

6. New Jersey Statutes Annotated, Section 2A:4-44.
7. *Kent* v. *United States*, 383 U.S. 541 (1966).
8. *State* v. *Van Buren*, 15 A.2d 649; 29 N.J. 548 (1959).
9. *Goodlet* v. *Goodman*, 169 A.2d 140; 34 N.J. 565 (1961).
10. *State* v. *Tuddles*, 185 A.2d 284; 38 N.J. 565 (1962).
11. *State* v. *Loray*, 215 A.2d 539; 46 N.J. 179 (1965).
12. *State* v. *Lueder*, 376 A.2d 1169; 74 N.J. 179 (1977).
13. *Application of Smigelski*, 154 A.2d. 1; 30 N.J. 513 (1959).
14. *State* v. *Smith*, 161 A.2d 520; 32 N.J. 501 (1960).
15. New Jersey Statutes Annotated, Section 30:4-147.
16. New Jersey Statutes Annotated, Section 2A: 4-61(h).
17. New Jersey Statutes Annotated, Section 30:4-157.1.
18. New Jersey Statutes Annotated, Section 30:4-85.
19. New Jersey Statutes Annotated, Sections 30:4-84 and 30:1-7.



NEW YORK PROFILE

ACKNOWLEDGMENTS

For their assistance in providing necessary data, the Academy thanks Robert Giblin and Jim Miller, Division of Criminal Justice Services. Gratitude is also owed to Charles Kuhlman, New York City Criminal Justice Agency; Martin Roysher, State Division for Youth; and Jody Adams Weisbord, Vera Institute of Justice for providing additional information. In addition, the many state and local officials who aided this study in numerous ways are owed a great deal of gratitude.

The staff of the Academy also expresses its appreciation to the following case study respondents for their time, interest, and cooperation.

Jack Birnbaum
State Commission on Corrections
Albany

Richard Boccio, Public Defender
Legal Aid Society
Buffalo

William J. Bradley, Deputy Director
Division for Youth
Albany

Nick Capra
Office of the Court Administrator
Albany

Marilyn Chandler
Criminal Justice Research Center
Albany

Edward C. Cosgrove, District Attorney's Office
Erie County
Buffalo

James Davidson, Deputy County Attorney
Warren County
Glens Falls

Jan Eggers, County Attorney's Office
Erie County
Buffalo

Anne Fanning, Associate Counsel
Temporary Commission on Child Welfare
New York City

Janet Fink
Juvenile Rights Division
Legal Aid Society
New York City

Sol Greenburg, District Attorney's Office
Albany County
Albany

Frank Hall, Director
Division for Youth
Albany

Honorable Joseph Harris
Albany County Court
Albany

Honorable Harold Katz
Family Court
Warren County
Glens Falls

Honorable Rose D. LaMendola,
Administrative Judge
Erie County Court
Buffalo

Pat Lappin, Special Assistant to the Chairman
State Division of Parole
Albany

Juan Ledoux, Chief of Training
State Division of Parole
New York City

Jeremiah McKenna
Select Committee on Crime
New York City

Honorable Peter J. McQuillan
State Supreme Court
New York City

Douglas Millar, Special Assistant to the Chairman
Task Force on Juvenile Parole
State Division of Parole
New York City

Jim Miller
Division of Criminal Justice Services
New York City

Hermine Nessen, Staff Coordinator
Citizens Committee for Children of New York
New York City

John O'Donnal, Bureau Chief
Juvenile Offense Bureau
District Attorney's Office
New York City

Charles Schnitsky
Legal Aid Society
Juvenile Rights Division
New York City

Morris Silver, Deputy Administrator for Juvenile Justice
Division of Criminal Justice Services
New York City

Honorable Brenda Soloff
Manhattan Criminal Court

Paul Strasburg, Commissioner
Department of Juvenile Justice
New York City

Honorable Michael Tepedino
Albany County Family Court
Albany

Honorable Douglas Trost
Erie County Family Court
Buffalo

Dr. Marguerite Warren
Criminal Justice Research Center
Albany

Laurel Winogar, Program Analyst
Committee on Child Care
New York Legislature
Albany

METHODOLOGY

Due to the uniqueness of the New York system, the mid-year changes in the law, and the availability of data, the Academy sought information on youth in adult courts differently than in other states. Phase I frequency data on 13, 14, and 15 year olds tried as adults for excluded offenses in New York were provided by the state Division of Criminal Justice Services. These data were limited to the four-month time period that the law was in effect in 1978 and primarily to the five counties which comprise New York City. Some Phase II data on offense and disposition were available from this same source on the New York

City cases only. The New York City Criminal Justice Agency provided some age, sex, and race statistics for the first three months of the law's enactment.

In New York, 16 and 17 year olds are criminally responsible as adults. Therefore, they are always tried in adult courts for all criminal offenses. Data, however, were not retrievable from the local courts in a way that would permit isolating these two age groups. The next best available information was arrest data, which were also provided by the state's Division of Criminal Justice Services. The Academy did not conduct the usual Phase II survey of the most populous ten percent of the counties or the counties for which five or more arrests of 16 and 17 years olds had been reported. Instead, Phase II data on age, sex, and offense, by county, were provided by the state data source. The Academy did not attempt to verify this information with local sources, due to the difficulty in isolating this age group from other adult offenders.

New York was chosen as the case study from federal administrative region 2. It is the nation's second most populous state and contains a mix of urban and rural counties. More important, New York was chosen for the uniqueness of its juvenile justice system. It is one of only four states in America where the minimum age of initial criminal court jurisdiction is 16 and one of only four states having no provision for judicial waiver of cases from family (juvenile) to adult courts in 1978.

New York is also unique because of its highly publicized juvenile justice legislation over the last few years. The first of these was the Juvenile Justice Reform Act of 1976. It authorized minimum periods of secure and residential confinement for youth convicted in family courts of serious felonies. This was followed by two major pieces of legislation--the Omnibus Crime Bill of 1978 and its amendments in 1979. These two acts established a class of 13 to 15 year juveniles to be tried in adult courts for excluded serious offenses. These juvenile offenders may be removed to family courts at any time in the proceedings until final sentence is pronounced, constituting a "reverse waiver" mechanism. The 1978 act and its 1979 amendments are also significant in that they were viewed as possible models for legislation in other states, most notably Massachusetts, Connecticut and Vermont.

Finally, New York is of interest as a case study state due to its family court system. Placing jurisdiction over so many juveniles accused of criminal offenses in its adult court system is in marked contrast to the national pattern of juvenile courts serving as the dominant court for delinquency charges against anyone under the age of 18. New York's Family Courts, therefore, have smaller jurisdictional responsibilities for delinquents than are found elsewhere, and quantitatively smaller caseloads than they would have if their jurisdiction extended to the typical age of 18.

In November 1979, staff from the Academy conducted in-depth interviews with 32 persons active in the New York justice system. The sites selected for the interviews included the state capital (Albany), the state's largest city (New York City), a representative county (Erie), and a rural county (Warren). Warren County is also of interest in that it was one of three communities then receiving state agency-administered juvenile intake and probation services. In addition, a few key respondents were interviewed in Syracuse (Onondaga County).

Background information on statutory provisions, courts, and corrections organization were also compiled. This research served as a basis for the questions asked and the information presented in this case study report.

Interviews were conducted with family court judges, criminal and county court judges, supreme court judges, district attorneys, county attorneys, law guardians and legal aid attorneys, state juvenile and adult corrections personnel, citizen advocates, legislative staff researchers, and other state and local people concerned about trying juveniles as adults. The questions concerned their perceptions of the effects of particular mechanisms for trying youth under 18 years of age as adults, how the system actually works, what changes could be foreseen or recommended, and what an ideal system might look like.

HISTORY OF STATUTES RELATING TO JURISDICTION AND TRANSFER

In New York, there are, at present, two ways in which youth may be tried in adult courts. The first legal mechanism, designated in this report as an age-of-jurisdiction provision, results from state laws which automatically impose criminal responsibility on all persons age 16 and older. Therefore, all 16 and 17 year old youth are automatically referred to adult criminal courts for trial. While the age of jurisdiction in New York is lower than 46 other states in the country, it has been the law in this state since the passage of the original children's court act in 1922.

The second legal mechanism, defined herein as an excluded offense provision, resulted from 1978 legislation which caused the automatic referral of all 13, 14, and 15 year olds charged with statutorily specified crimes to adult courts.

New York's juvenile justice system came into being in 1922 with the enactment of the Children's Court Act. The act conferred upon the children's court in each county exclusive original jurisdiction over all cases involving children who were under the age of 16 years and charged with an act of delinquency or any violation of law.[1]

In 1930, the statutes were renumbered and the category of delinquent child was enlarged to include those children who were habitually disobedient, truant, had run away, or who had committed other minor status offenses.[2] In the 1962 revision, "persons in need of supervision" (PINS) were distinguished from juvenile delinquents for the first time in New York's history. The former class was defined to include violators of the education act, as well as habitually disobedient children beyond the control of their parents or guardians.[3] At that time, the statutes were again renumbered and remain part of the current code. Section 713 gives family courts exclusive jurisdiction, as defined in Section 115, over all PINS and delinquents (up to age 16, except for excluded juvenile offenses, mentioned above).

113

New York has excluded certain offenses from family court jurisdiction almost continually since 1922. The original act excluded children of any age who were charged with offenses punishable by death or life imprisonment from the jurisdiction of the children's court.[4] However, in 1948, the statute was changed so that only children who were 15 years of age and charged with one of these offenses would be automatically processed as adults.[5] The statute mandated that family courts were to have no jurisdiction over these offenders, unless they were returned from the adult courts pursuant to the former Code of Criminal Procedure. The section provided that 15 year olds (the age at the time of their offense) could be recommended for removal to family court by district attorneys. If removal was requested, the criminal courts could order mental and physical examinations and conduct a questioning of the defendant. If, after examination and questioning, the best interest of the state, and the welfare of the defendant would be served, it could order removal to family court and dismiss the criminal indictment.[6]

New York had no class of excluded offenders during the period 1967 to 1978. Section 715, which provided for adult treatment of those who committed crimes punishable by death or life imprisonment, as detailed above, was repealed in 1967.[7] The broadening in 1962 of the definition of "juvenile delinquent" to include all persons over seven and less than 16 years of age who committed any act which if done by an adult would constitute a crime was in effect at this time.[8]

The problem of how to handle serious juvenile offenders has been central to juvenile justice legislation for many years. In 1975, after much public controversy, a Governor's Panel on Juvenile Violence was organized, to study the problem of juvenile violence and to develop recommendations for appropriate executive and legislative action. Frequent reports in the news media emphasized that violent crime, particularly serious acts by juveniles, were increasing at an alarming rate. The climate for the state was set by the conditions in New York City. Governor Carey, in forming the panel, emphasized that "there will be no higher priority in this administration than to restore a sense of security, of justice and order in every corner of the state." In directing the panel to examine the strengths and weaknesses of the juvenile justice system, he asked that there be a balance between the need for "the protection of society and the rights of juveniles." The panel concluded that:

> In confronting the task of developing recommendations that can assure greater protection for the community against violent acts by juveniles 14 and 15 years of age, the panel agreed that nothing would be gained and much would be lost by legislation that transferred or waived such young children to the overburdened criminal justice system in which all the worst defects of the juvenile justice system are exaggerated.[9]

The major recommendation resulting from the panel was a reaffirmation of juvenile jurisdiction within the family court. At the same time, the panel recommended that there be secure confinement for 14 and 15 year olds who commit serious and violent acts against persons and who are found to be a danger to others or themselves. Emphasis was also placed on services to be provided to the juveniles.

The bill which resulted from the report had full hearing, with provisions considered for judicial waiver and lowering the age of family court jurisdiction. In 1976, the legislature, following the recommendations of the panel, passed a bill retaining original jurisdiction in the family court, but mandating minimum periods of secure and residential confinement for certain juveniles guilty of certain designated felonies.[10] The term "designated felonies" came to be used as a means of describing these acts of delinquency which carry with them mandated periods of incarceration. Under the designated felony provisions 13 up to 16 year olds charged in family courts with any one of 14 serious crimes, would be subject, if adjudicated delinquent, to determinate confinement. Similar jeopardy was attached to any juvenile above the age of seven who had been adjudicated delinquent twice previously for prior felonies.

The courts need not order restrictive placements, except where complaintants over 62 years of age have incurred serious physical injury. However, juveniles found to need such placements must be placed for an initial period of five years (the first 12 months of which must be in a secure facility and the second 12 months in a residential facility) if the offense charged was a Class A designated felony. The remaining period is left to the discretion of the Division for Youth. For all other designated felonies, the restrictive placement must be for three years, with six to 12 months in a secure facility. Confinement may be ordered by the courts for periods beyond the mandated initial confinement, by granting motions requesting such extensions filed by interested parties.

Under the 1976 Juvenile Justice Reform Act, youth tried and adjudicated in family courts are to be placed in a Division for Youth restrictive placement. There was no option of administrative transfer to the adult Department of Correctional Services.

The 1978 Omnibus Crime Bill marked a return in New York to the use of excluded offense provisions for serious juvenile offenders.[11] It lowered the age of criminal responsibility for murder to 13 and to 14 for an enumerated class of serious felonies. To distinguish them from designated felony cases in family courts, these youth became colloquially known as juvenile offenders, and are referred to as such in this report.

The major consequence of the juvenile offender provision is that these youth convicted by criminal courts face the possibility of longer confinement than they would under the family court dispositional limitations. The 1978 act provides that 13, 14, or 15 year old youth who are referred to adult courts may be transferred to family courts at any time up to final sentencing. Thus, a "reverse waiver" situation exists which, when exercised, usually results in youth originally charged as juvenile offenders being tried under designated felony provisions in family court.

The 1979 amendments to the juvenile offender provision limited the power of the lower-level trial courts to remove cases to family courts. Discretion as to the appropriate forum now rests, for the most part, with the district attorneys.

If there is reasonable cause to believe that the juvenile committed a crime for which he is criminally responsible, the lower-level trial court may now only remove juvenile offenders in the interest of justice and at the request of the district attorney. If the district attorney requests removal, the county or supreme court must grant the motion, if it finds that the interests of justice would be served. There are different factors to be considered if the charge is second degree murder or an armed felony.

A final part of this complicated array of prior and current legislation is known as the Youthful Offender Act.[12] This is actually a sentencing provision available to adult courts. Prior to the 1979 amendments, it was applicable to certain 16 through 19 year old criminal defendants. To be eligible, defendants must:

- Be convicted of any crime exept very serious felonies;
- Have no previous felony conviction and sentence;
- Have no previous youthful offender felony adjudication; and
- Have no previous juvenile delinquency finding based on a designated felony. This final condition is somewhat revolutionary, in that it guarantees that a youthful defendant's delinquency record in family court will be introduced into the sentencing procedure in criminal court.

If the adult court finds the youth eligible, the conviction will be vacated and replaced with a youthful offender finding. In other words, youthful offenders in New York are not convicted of their crimes--they are "found" to have committed them. If the court does not so find, defendants will be sentenced under normal sentencing provisions.

In 1979, the "youthful offender" provisions were extended to "juvenile offenders." This was intended to correct an inequity that could result, wherein a 15 year old juvenile offender might otherwise receive a harsher sentence than a 16 year old "adult" would receive when treated as a youthful offender. The 1979 amendments made it clear that 14 and 15 years old juvenile offenders were eligible for youthful offender treatment. Thirteen year old defendants (who can only be charged with murder in adult courts) remain ineligible for treatment as youthful offenders.

Youthful offenders whose convictions were based on charges other than felonies must receive a determinate sentence of no more than one year. In addition, there are numerous dispositional options available. Youthful offender findings based on felony charges may result in an indeterminate sentence of no more than four years and may result in straight probation, conditional or unconditional discharge, fines, etc. Most youthful offenders receive probation. Felony narcotic addicts are not eligible for conditional or unconditional discharge.

The Children's Court Act of 1922 failed to provide a maximum age limit on the court's power to retain jurisdiction over delinquents. The 1930 act did specify however that children's court jurisdiction, once obtained, would terminate upon the juvenile's 21st birthday.[13] This was the status of the law until 1962, when the code underwent a substantial revision.

The 1962 statute, although substantially amended in 1974 and in 1976, still contains many of the substantive provisions which were present when it was enacted. In particular, it still provides for family court jurisdiction up to the child's 18th birthday or up to the age of 21 years with the child's consent.[14]

A subsection of the 1962 commitment provision provided for mandatory commitment of children who committed Class A or B felonies when 15 years or older to a reception center or to a state institution.[15] The provision also allowed the committing court to make further orders as to the child's placement, but limited the period of commitment to three years. The legislative committee's report indicates that the intent of the legislature was to fix the maximum duration of an order of commitment at three years. Orders made by the court after an initial order of probation were not to expand the length of jurisdiction of the court.

The commitment section was repealed in 1976. Section 753-A, which provided for the restrictive placement of juveniles who committed designated felonies, was enacted that year. It allowed for extension of placement upon the expiration of the initial period of placement in one-year increments up to the age of 21 years. If the court determined that restrictive placement was not necessary, then the order of disposition was pursuant to delinquency disposition.[16]

Case Law Summary

The New York Court of Appeals has decided, in the last 30 years, one major case involving transfer issues, as these terms have been defined in this study. The court has, however, rendered several opinions concerning the youthful offender provision.

New York's prior youthful offender statute required that, after an eligible candidate was either indicted or proceeded against by an information, the grand jury, district attorney, or court could recommend the defendant for youthful offender treatment. Once the court approved the recommendation, an investigation was mandatory. After the completion of the investigation, and with the court's approval, the indictment or information was sealed and the youthful offender adjudication process was begun by the issuance of a youthful offender information. This information alleged the same facts as did the indictment or criminal information. Ultimately, the offender was sentenced under the youthful offender provision.

The Court of Appeals, in People v. Sykes, held that, although the lower court is not required to make formal findings of fact in youthful offender cases, the court must specify which culpable acts support its determination when the defendant is charged with several distinct offenses.[17] Four months later, in People v. Michael O., the court held that the trial court did not abuse its discretion in refusing to permit disclosure of the pre-sentence reports.[18] Further, in People v. Vidal, it was held that youthful offenders were subject to cross-examination concerning the underlying act.[19] Finally, in People v. Michael A. C., the court of appeals held that the statutory provisions, which compelled a defendant who was charged with a serious offense to consent to a non-jury trial in order to be eligible for youthful offender treatment, were unconstitutional.[20]

In People v. Cook, the court held that, although the prosecution may attempt to impeach a defendant by cross-examining him on the underlying criminal act, a previous youthful offender adjudication may not be shown to affect the defendant's credibility, since it did not constitute a criminal conviction.[21] The court, in People v. Gina M. M., reversed the conviction, which was based upon a guilty plea, because the trial judge incorrectly advised the defendant that a youthful offender conviction would not result in a "scar" or "blemish" on her record.[22] That same year, in People v. Drummond, the court required that the eligibility determination be based on the adjudication, not merely the arrest charge.[23]

The major transfer case was Matter of Vega v. Bell. In this case, the court of appeals held the juvenile offender provisions to be constitutional and a hearing is not required prior to the court removing or denying the removal of juveniles to family courts.[24]

A designated felony case was also heard in 1979, challenging the provision by which a juvenile adjudicated delinquent for a designated felony, must be given a restrictive placement if the complainant is over 62 years of age and incurred serious physical injury. The court of appeals in this case of Matter of Quinton A. ruled the provision constitutional.[25]

Juvenile Court Dispositional Options

New York's family courts have a wide range of state and local services available to them. However, none of them are operated directly by the courts and they are not uniformly available in every county. The former condition exists because of a legislative decision in the early 1970s to unify all county judges into a state court system. One repercussion of this decision was for the courts to divest themselves of such service responsibilities as probation or detention. These services are now part of either local or state executive-branch agencies.

The Division for Youth (DFY), established in 1960 as a successor agency to the New York State Youth Commission, is responsible for establishing regulations for secure and non-secure detention facilities and for reimbursing counties for half the cost of detention care. The operation of detention remains a local responsibility. Under state law, counties may be reimbursed for secure detention facilities only after non-secure detention has been provided. The result is that few rural or medium sized counties have secure detention facilities.

In New York City, both secure and nonsecure detention is operated by the Department of Juvenile Justice (DJJ), a department of city government. It can provide placements directly or contract with public and private agencies for such services. Spofford is the secure detention facility for New York City. "Juvenile offenders" who are detained awaiting trial in adult courts are also placed there.

Family courts in New York may make the following dispositions in delinquency cases:

1. Suspend judgment and order restitution or public service.

2. Place the juvenile on probation.

3. Place the juvenile in its own home or in the custody of a suitable relative or other suitable private person, the Commissioner of Social Services or the Division for Youth.

4. When the juvenile is found to have committed a designated felony, place the juvenile under a restrictive placement.

5. Place the juvenile with the Division for Youth for temporary transfer to the custody of either the Commissioner of Mental Health or Commissioner of Mental Retardation and Developmental Disabilities for Admission to the appropriate facility.

Each type of disposition has statutorily defined procedures and lengths of placement. For detailed information see Sections 753-760 of the Family Court Act.

The state Division for Youth operates programs, training schools, and secure centers. Six secure facilities provide placement for the juvenile offenders incarcerated by the criminal courts and for the delinquents and designated felons committed to it by the family courts.

PROCEDURES FOR TRYING YOUTH AS ADULTS IN 1978

Court Organization

In New York, the supreme courts are the highest courts of general jurisdiction. (The highest court in the state is the Court of Appeals, which corresponds to the supreme court designation in most other states.) Supreme

courts are established in 62 New York locations: 57 counties and the five boroughs (counties) consolidated into New York City. County courts have concurrent criminal jurisdiction with supreme courts and are located in every county outside of New York City.

The New York City Criminal Court has original jurisdiction over preliminary hearings in felony cases and is a trial court for traffic and misdemeanor offenses. This court has branches in all five boroughs (counties) of New York City. Felony trials, including all of the juvenile offender crimes and charges against 16 and 17 year old "adults," are heard in the supreme court in New York City.

Minor criminal matters outside New York City are heard in district, municipal, town, or village courts.

Each of New York's counties (including New York City, a five-county consolidation) has a family court where juvenile delinquency cases are heard. Many family court judges serve as county court judges as well. Thus, they may preside over juvenile offender hearings, sitting as county court judges, and subsequently preside over family court hearings on the same cases, if removed to family court. Family courts in New York will hereafter be referred to as juvenile courts.

An overview of New York's court jurisdiction over juveniles appears below.

NEW YORK: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles[a]	Juvenile Traffic[b]
Family Courts	County Courts Supreme Courts New York City Criminal Courts	Family Courts

a. Due to the lower age of jurisdiction in New York, 16 and 17 year olds are routinely handled as adults. Terminology reflects standardized format of report.

b. Traffic violations by 16 and 17 year olds are routinely handled as adult cases, due to the lower age of jurisdiction in New York.

Transfer Process

The initial age of juvenile court jurisdiction in New York extends to 16 years of age, in cases involving acts that would be crimes if committed by adults.[26] Certain crimes enumerated below, when committed by 13, 14 and 15 year olds are excluded offenses, but may be removed to juvenile courts from adult courts. Therefore, two legal mechanisms exist in New York for trying persons under the age of 18 as adults--through excluded offenses and lower age of criminal jurisdiction provisions. It is notable that New York has traditionally been among the few states having no mechanism for the judicial waiver of juveniles to adult courts.

Excluded Offenses

Thirteen year old youth who are charged with murder in the second degree must be charged in criminal courts.

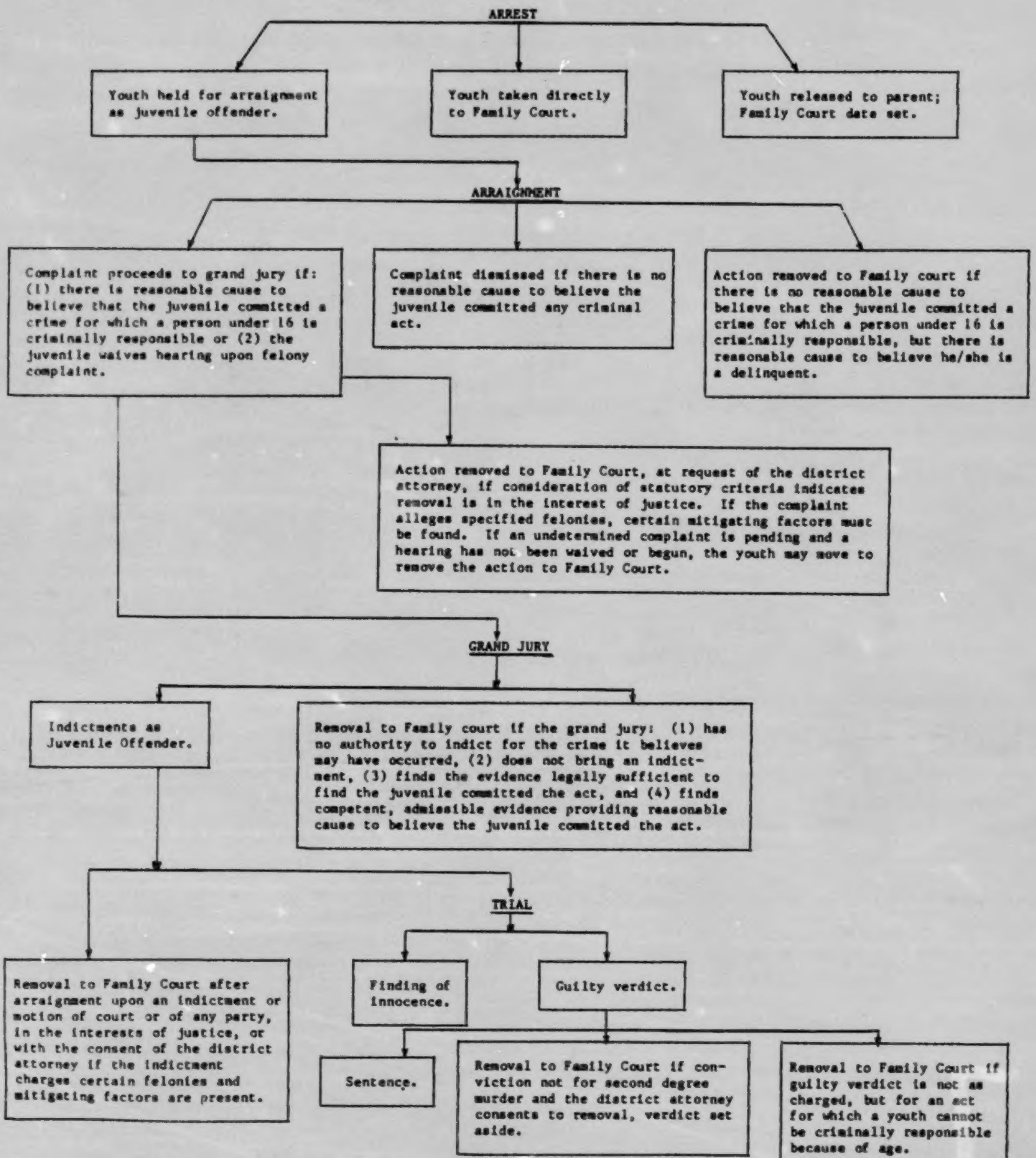
Fourteen and fifteen year old youth who are charged with the following crimes must also be charged in adult courts:

- Murder, second degree
- Kidnapping, first degree
- Manslaughter, first degree
- Arson, first or second degree
- Assault, first degree
- Rape, first degree
- Sodomy, first degree
- Robbery, first or second degree
- Burglary, first or second degree
- Attempt to commit kidnapping
- Attempt to commit murder[27]

At any time in the process of grand jury investigation or trial, including the period beyond conviction but before sentencing, criminal courts may remove such cases to the juvenile courts. If this event takes place, these juvenile offenders become subject to laws pertaining to juvenile delinquency, and are normally tried under designated felony provisions, with regard to juvenile court dispositions.

Figure 33-1 describes the process that occurs when a 13, 14, or 15 year old is arrested and referred to adult court as a juvenile offender. It reflects the legislative intent to permit transfers to juvenile courts even after a finding of guilt.

FIGURE 33-1. NEW YORK: PROCEDURES FOR THE REFERRAL OF JUVENILE OFFENDERS[a]



Youth held for arraignment as juvenile offender.

Youth taken directly to Family Court.

Youth released to parent; Family Court date set.

Complaint proceeds to grand jury if: (1) there is reasonable cause to believe that the juvenile committed a crime for which a person under 16 is criminally responsible or (2) the juvenile waives hearing upon felony complaint.

Complaint dismissed if there is no reasonable cause to believe the juvenile committed any criminal act.

Action removed to Family court if there is no reasonable cause to believe that the juvenile committed a crime for which a person under 16 is criminally responsible, but there is reasonable cause to believe he/she is a delinquent.

Action removed to Family Court, at request of the district attorney, if consideration of statutory criteria indicates removal is in the interest of justice. If the complaint alleges specified felonies, certain mitigating factors must be found. If an undetermined complaint is pending and a hearing has not been waived or begun, the youth may move to remove the action to Family Court.

Indictments as Juvenile Offender.

Removal to Family court if the grand jury: (1) has no authority to indict for the crime it believes may have occurred, (2) does not bring an indictment, (3) finds the evidence legally sufficient to find the juvenile committed the act, and (4) finds competent, admissible evidence providing reasonable cause to believe the juvenile committed the act.

Removal to Family Court after arraignment upon an indictment or motion of court or of any party, in the interests of justice, or with the consent of the district attorney if the indictment charges certain felonies and mitigating factors are present.

Finding of innocence.

Guilty verdict.

Sentence.

Removal to Family Court if conviction not for second degree murder and the district attorney consents to removal, verdict set aside.

Removal to Family Court if guilty verdict is not as charged, but for an act for which a youth cannot be criminally responsible because of age.

---

[a] Source: Martin Roysher and Peter Edelman, "Treating Juveniles as Adults in New York: What Does It Mean and How Is It Working?," in Hall, et. al., Major Issues in Juvenile Justice Information and Training: Readings in Public Policy (Columbus, OH: Academy for Contemporary Problems, 1981), p. 279.

Lower Age of Criminal Jurisdiction

The age of jurisdiction for criminal responsibility in New York is 16 years of age. There are no circumstances under which 16 and 17 year old youth may be tried in juvenile courts for criminal offenses. The age of criminal responsibility used in New York does not apply to other legal situations, such as contracts, torts, age of majority or even other types of cases in juvenile courts.

Role of the Prosecutors

The prosecutorial role in the process of trying youth under 16 years of age as adults in New York is comparatively broad, most notably in terms of decisions to remove cases to juvenile courts. The state district attorneys represent the state in county courts, supreme courts, and New York City Criminal Court. County attorneys (corporation counsel in New York City) represent the interests of the state in civil matters, including juvenile court hearings. Their involvement in juvenile courts is very different from the function of district attorneys in adult courts. Although proceedings in juvenile courts are adversary in nature, county attorneys are generally more interested in achieving an equitable solution in each case. Thus, the county attorney tends to view himself as "a friend of the court," or as impartially assisting in the delivery of necessary services. In keeping with the philosophy of the juvenile courts, the county attorneys act in a more informal manner, with less demarcation of roles between prosecutor, law guardian, and probation officer.

While the county attorney's office is usually separate from the office of the state district attorney, contracts are permitted between the two offices. This is for the purpose of using district attorneys to present petitions in juvenile delinquency proceedings when designated felonies are alleged. District attorneys also represent the state in juvenile offender cases in adult courts and generally continue to represent the state when cases are removed to juvenile courts.

Defender Services

The Family Court Act provides that "minors who are the subject of family court proceedings must be represented by counsel of their own choosing or by law guardians to protect their interests and to help them express their wishes to the court."[28] The act requires appointment of a law guardian where independent legal representation is not available. In New York, legal aid societies frequently act as law guardians for their counties. In smaller counties appointed counsel may serve this function. Juvenile offenders are represented in county,

criminal, supreme courts and juvenile courts by law guardians or by private counsel.

Confinement Practices

Detention Practices

Sixteen and 17 year old adults in New York, awaiting trial may be detained in any facility used for adult offenders. The New York City Department of Corrections provides detention services for youth 16 years old and above.

Juvenile offenders may be housed in secure and non-secure facilities certified by the state Division for Youth as a juvenile detention facility. Youth under 16 years of age cannot be detained in any prison, jail, lockup, or other place used for adults convicted of crime or under arrest and charged with crime unless the approval of the state Division for Youth is obtained for each youth.[29]

Sentencing Options

Juvenile offenders found guilty in adult courts are subject to sentencing provisions which are separate from the normal juvenile and adult court sentencing structures. While the sentences are less than those imposed on adults for the same crimes, the criminal courts must still impose sentences with specific minimum and maximum sentence lengths, to be served in secure facilities run by the Division for Youth (DFY).

The state Department of Correctional Services (DOCS) operates adult correctional institutions and community programs. Both 16 and 17 year old youth, when sentenced to confinement, are routinely sent to DOCS, generally to Elmira Correctional Facility. Elmira houses most of those offenders who are young or who are considered less sophisticated.

While juvenile offenders cannot be sent to DOCS by criminal courts, they may end up there through a combination of administrative and judicial decisions. The DFY may request the criminal court to transfer a juvenile offender to an adult prison after his or her 16th birthday to serve the remainder of the sentence. The court must grant a hearing and determine that juvenile treatment and services will not benefit the youth. When the juvenile offender reaches the age of 18, DFY may transfer the case to DOCS, without judicial approval. If the juvenile offender is still under DYF jurisdiction at age 21, the case must be transferred to DOCS.[30]

Persons between the ages of 14 and 19, tried in adult courts as juvenile offenders or adults, may be sentenced as youthful offenders upon conviction. (See statutory history section.) Youthful offender sentences for felonies include probation, misdemeanor sentences, imprisonment to 60 days plus probation, and intermittent imprisonment. Sentences to imprisonment are for determinate sentences under youthful offender provisions. Usually youth sentenced as youthful offenders are placed at Elmira Correctional facility. According to state sources, the most common sentence is probation under this sentencing option.

The New York City Department of Corrections functions for the five boroughs (counties) in much the same way as the state department. It provides institutional services, however, for defendants charged with less serious crimes. In addition, it serves in a dual capacity as both a pretrial and a postsentence agency. Persons 16 years of age or older may be incarcerated in city facilities for detention, or as a result of sentences.

STATE DATA SUMMARY

Because of New York's lower age of criminal jurisdiction provision, data available describing juvenile offenders are much different than data available for 16 and 17 year old offender cases in other states. Data on 13, 14, and 15 year olds excluded initially from juvenile court jurisdiction were provided by the Division of Criminal Justice Services. Arrest data, by county, on 16 and 17 year olds were also obtained from the Division of Criminal Justice Services. Arrest is tantamount to court filing in New York according to respondents.

Table 33-1 reflects retrievable frequency data for both types of legal mechanisms. Excluded offenses were reported only for the five counties of New York City; however, reliable state and local sources estimated that 85 to 90 percent of all juvenile offender crimes in the entire state occur in New York City. In addition, the data represent filings occurring during the last four months of 1978, the only time in which the excluded offense provisions were in effect during the base year. If only the estimated juvenile populations of the five counties are utilized, the rate of referrals due to excluded offenses is 4.641 cases per 10,000 youth.

The Age of Jurisdiction column in Table 33-1 reflects arrests of 16 and 17 year old youth during 1978, and each county's rate of arrest, per 10,000 estimated juvenile population. The five counties (boroughs) of New York City, with 36 percent of the state's juvenile population, accounted for 59 percent of the 16 and 17 year old arrests.

TABLE 33-1. NEW YORK: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISMS)

County	Juvenile Population (Ages 8-17)[a]	Excluded Offenses[b]		Age of Jurisdiction	
		Cases	Rate[c]	Cases[d]	Rate[c]
Albany	46,314	*		1,457	314.592
Allegany	8,896	*		136	152.878
Bronx	237,757	102	4.290	11,062	465.265
Broome	38,121	*		811	212.744
Cattaraugus	15,847	*		516	325.614
Cayugau	14,056	*		312	221.969
Chautaqua	25,841	*		456	176.464
Chemung	18,524	*		435	234.830
Chenango	9,648	*		353	365.879
Clinton	15,736	*		317	201.449
Columbia	9,661	*		277	286.720
Cortland	8,338	*		268	321.420
Delaware	8,125	*		228	280.615
Dutchess	41,597	*		869	208.909
Erie	193,622	*		2,785	143.837
Essex	6,668	*		220	329.934
Franklin	8,925	*		358	401.120
Fulton	9,685	*		287	296.334
Genesee	11,624	*		265	227.977
Greene	6,204	*		212	341.715
Hamilton	846	*		35	413.711
Herkimer	12,306	*		170	138.144
Jefferson	17,654	*		436	246.970
Kings	407,082	194	4.766	18,921	464.796
Lewis	5,058	*		41	81.060
Livingston	10,146	*		374	368.618
Madison	12,224	*		383	313.318
Monroe	128,773	*		3,692	286.706
Montgomery	8,866	*		153	172.569
Nassau	247,590	*		3,166	127.873
New York	150,041	117	7.798	20,596	1,372.691
Niagara	42,990	*		768	178.646
Oneida	47,528	*		725	152.542
Onondaga	87,211	*		2,018	231.393
Ontario	16,222	*		345	212.674

TABLE 33-1 (Continued)

County	Juvenile Population (Ages 8-17)[a]	Excluded Offenses[b]		Age of Jurisdiction	
		Cases	Rate[c]	Cases[d]	Rate[c]
Orange	45,293	*		1,459	322.125
Orleans	7,420	*		150	202.156
Oswego	21,600	*		475	219.907
Otsego	8,910	*		160	179.574
Putnam	15,352	*		411	267.718
Queens	258,762	90	3.478	7,596	293.552
Rensselaer	27,160	*		681	250.736
Richmond	60,450	14	2.316	1,070	177.006
Rockland	53,373	*		1,289	241.508
St. Lawrence	21,482	*		675	314.217
Saratoga	28,930	*		829	286.554
Schenectady	25,536	*		623	243.969
Schoharie	5,100	*		125	245.098
Schuyler	3,471	*		111	319.792
Seneca	5,684	*		250	439.831
Steuben	18,888	*		502	265.777
Suffolk	265,412	*		4,255	160.317
Sullivan	9,924	*		373	375.856
Tioga	10,388	*		212	204.082
Tompkins	11,422	*		366	320.434
Ulster	27,471	*		692	251.902
Warren	10,404	*		338	324.875
Washington	10,906	*		247	226.481
Wayne	16,837	*		497	295.183
Westchester	145,685	*		2,509	172.221
Wyoming	7,443	*		104	139.729
Yates	4,002	*		149	372.314
Total	3,057,031	517 est	1.691[e]	99,595	325.790

* denotes Not Available.

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. This provision became effective September 1, 1978 and data represents the four month period in which it was in effect during 1978.

TABLE 33-1. (Continued)

c. Rate per 10,000 juveniles eight to 17 years old (1978).

d. Arrest data provided by the state Division of Criminal Justice Services. State sources estimated that the number of court filings approximates the number of arrests by about 100 percent.

e. Rate calculated on entire state's estimated juvenile population. Only utilizing the estimated juvenile populations of the five counties comprising New York City, the rate is 4.641 per 10,000 in 1978.

Excluded Offenses

This section contains a series of tables and a brief discussion pertaining to the Phase II information gathered about youth referred to adult court during 1978 through the state's excluded offenses mechanism.

Demographic data (age, sex, and race) were only available from the New York City Criminal Justice Agency about New York City cases which were reported in the first three months of the mechanism's 1978 existence. All of the youth were, of course, 13 through 15 years of age. Ninety-two percent were male. The race data reflected 27 percent white; 73 percent were reported as minority group members.

Data on the charges filed during 1978 against all 517 juvenile offenders reported in the Phase I frequency data are presented in Table 33-2. Personal offenses totaled 97 percent of the charges. Eighty percent (415) of all charges were for robbery.

TABLE 33-2. NEW YORK: JUVENILE REFERRALS TO ADULT COURTS DUE TO EXCLUDED OFFENSES IN THE COUNTIES OF NEW YORK CITY (BY COUNTY AND BY TYPE OF OFFENSE) IN 1978[a]

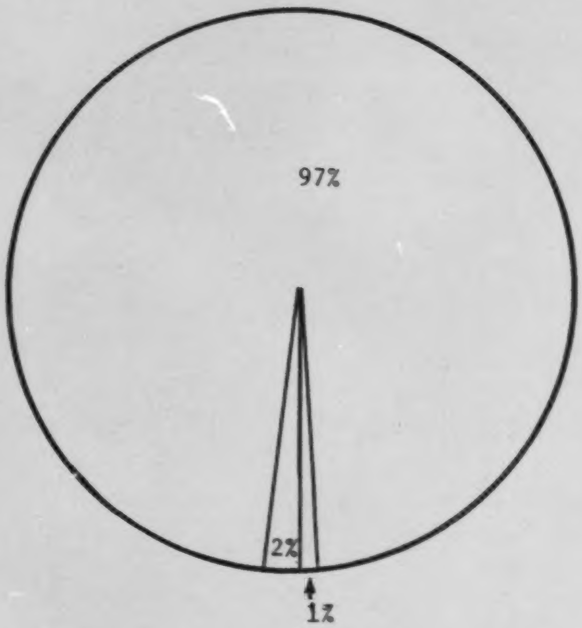
		Offenses[b]									
County	Total Referrals	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Bronx	102	9	2	75	0	7	8	1	0	0	0
Kings	194	8	3	164	0	7	9	2	0	0	1
New York	117	5	4	94	0	7	3	4	0	0	0
Queens	90	3	1	70	0	6	6	2	0	0	2
Richmond	14	1	0	12	0	0	0	1	0	0	0
State Phase II Total	517	26	10	415	0	27	26	10	0	0	3

a. For September, 1978, through December 31, 1978.

b. Only most serious offense per individual listed.

Figure 33-2 graphically displays the interrelationship of personal, property and public order offenses. Because New York's juvenile offender law is predicated upon offenses, not offenders, it can be seen that practically all such prosecutions are for violent crimes against the person.

FIGURE 33-2. NEW YORK: PERCENTAGE OF JUVENILE REFERRALS TO ADULT COURTS DUE TO EXCLUDED OFFENSES IN THE COUNTIES OF NEW YORK CITY (BY OFFENSE CATEGORY) IN 1978[a]



Offenses[b]

Personal	97%
Property	2%
Other General	1%
Public Order	0%

N= 517

a. For September 1, 1978, through December 31, 1978.

b. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent 92 percent of all offenses in the five counties which comprise New York City.

Table 33-3 reflects the dispositions for the excluded offense cases, reported in Table 33-2, for the five boroughs of New York City during the last four months of 1978. Because the juvenile offender law was so new and different for the system to administer, the data reflects few cases that actually went to trial, resulting in findings of guilt or innocence. During the period of September 1, 1978 to December 31, 1978, the data show that about 59 percent of the referrals were handled through removal to juvenile courts, dismissals, and refusals by prosecutors to prosecute. Approximately 38 percent of the cases were still pending by the end of the year.

TABLE 33-3. NEW YORK: JUVENILE REFERRALS TO ADULT COURTS DUE TO EXCLUDED OFFENSES IN THE COUNTIES OF NEW YORK CITY (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978[a]

County	Total Referrals	Judgments: Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other	Unknown
Bronx	102	0	29	38	0	32	3
Kings	194	0	36	83	1	72	2
New York	117	0	65	15	1	35	1
Queens	90	0	17	13	0	54	6
Richmond	14	0	1	6	0	6	1
State Phase II Total	517	0	148[b]	155	2	199[c]	13

a. For September 1, 1978, through December 31, 1978.

b. Includes 97 cases that district attorneys declined to prosecute and 51 cases that were dismissed.

c. Seventy-three cases were pending in criminal court, 49 were pending in the grand jury, and 77 had been indicted and were awaiting supreme court action.

Additional excluded offense information was available from New York sources on the first eight months of 1979. Interestingly, the judgments or dispositions in early 1979 were relatively similar to the previous four months. Of 1,268 excluded offense cases heard in New York City, 37 percent were removed to juvenile courts, 28 percent were dismissed when district attorneys failed to prosecute or when dismissed by the courts on other grounds, indictments were handed down in 20 percent, and 10 percent were pending. Only five percent of the cases

actually resulted in findings of guilt or innocence in the first two-thirds of 1979.

Returning to the 1978 data, Table 33-3 shows that two cases did result in convictions. Information on disposition was only available on one of them: the juvenile offender was sentenced to a maximum term of ten years confinement.

Supplemental data were also provided to the Academy by the state Division for Criminal Justice Services, relating to the arrests, indictments, and sentences of juvenile offenders during the first 28 months after the enactment of the 1978 legislation. In its report, entitled Juvenile Offenders in New York State, September 1, 1978 - December 31, 1980, the division points out that 3,738 youth were arrested during that period for the statutorily enumerated felonies which placed them under adult court jurisdiction. Over 85 percent of those arrests occurred within the five boroughs of New York City. During the same period, 1,074 indictments were handed down by county grand juries. Again, over 80 percent occurred in New York City. Since monthly rates of arrests during this 28 month period were relatively stable, it is safe to assume that many cases were either not referred to grand juries for one reason or another. Indeed, the report indicates that in New York City, there were 897 indictments, 1,069 removals to juvenile courts, 412 dismissals, and 406 cases in which prosecutors declined to prosecute. The remaining 424 cases were either pending or the outcomes were unknown. In other words, about one-fourth of the cases were known to have resulted in indictments. Statewide data for the same period reflects guilty findings in 529 of the 1,074 indictments.

These statistics, in some ways, reflect the general pattern of criminal justice processing in New York. According to the New York Select Committee on Crime, there were 570,358 reported serious felonies in New York City during 1978. These included homicides, rapes, robberies, aggravated assaults, burglaries, larcenies, and auto thefts. During the same period, there were 101,494 arrests for those crimes in the five boroughs.

There were 10,540 indictments and 8,241 felony convictions, resulting in 4,335 prison sentences, that is to say about 10 percent of the arrests result in indictments. When compared with juvenile offender arrest and indictment data, the rate of juvenile offender indictments are almost three times that of the general criminal population who are arrested for serious felonies.

Lower Age of Criminal Jurisdiction

This section contains a series of tables and a brief discussion pertaining to the Phase II information on 16 and 17 year old youth arrested and routinely subject to prosecution in adult courts due to the lower age of criminal jurisdiction in New York in 1978. The arrest data is treated here as being tantamount to court referrals, based upon representations by state and local officials that practically all arrests result in court referrals.

Table 33-4 reflects age and sex data by county on all 16 and 17 year olds arrested as adults resulting from New York's age of jurisdiction statute. Out of the approximate 100,000 arrests, slightly more offenders were 16 than 17. On the other hand, almost nine out of ten of them for which sex was reported were male.

TABLE 33-4. NEW YORK: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY COUNTY AND BY AGE AND SEX) IN 1978

County	Total Arrests	Age		Sex		
		16	17	Male	Female	Unknown
Albany	1,457	742	715	1,188	269	0
Allegany	136	63	73	129	7	0
Bronx	11,062	5,516	5,546	10,031	1,031	0
Broome	811	366	445	716	95	0
Cattaraugus	516	209	307	451	65	0
Cayuga	312	122	190	274	38	0
Chautauqua	456	205	251	393	63	0
Chemung	435	220	215	375	60	0
Chenango	353	162	191	300	53	0
Clinton	317	136	181	278	39	0
Columbia	277	137	140	239	38	0
Cortland	268	112	156	235	33	0
Delaware	228	102	126	89	*	139
Dutchess	869	429	440	731	138	0
Erie	2,785	1,236	1,549	2,403	382	0
Essex	220	91	129	201	19	0
Franklin	358	152	206	327	31	0
Fulton	287	144	143	248	39	0
Genesee	265	100	165	235	30	0
Greene	212	84	128	197	15	0
Hamilton	35	13	22	33	2	0
Herkimer	170	67	103	151	19	0
Jefferson	436	167	269	384	52	0
Kings	18,921	9,535	9,386	16,730	2,191	0
Lewis	41	16	25	39	2	0

TABLE 33-4 (Continued)

County	Total Arrests	Age 16	Age 17	Sex Male	Sex Female	Sex Unknown
Livingston	374	171	203	348	26	0
Madison	383	179	204	337	46	0
Monroe	3,692	1,784	1,908	3,078	614	0
Montgomery	153	64	89	127	26	0
Nassau	3,166	1,609	1,557	2,713	453	0
New York	20,596	12,988	7,608	18,763	1,833	0
Niagara	768	364	404	640	128	0
Oneida	725	332	393	642	83	0
Onondaga	2,018	942	1,076	1,695	323	0
Ontario	345	146	199	261	84	0
Orange	1,459	716	743	1,268	191	0
Orleans	150	68	82	133	17	0
Oswego	475	228	247	416	59	0
Otsego	160	62	98	138	22	0
Putnam	411	169	242	342	69	0
Queens	7,596	3,784	3,812	6,553	1,043	0
Rensselaer	681	343	338	601	80	0
Richmond	1,070	543	527	969	101	0
Rockland	1,289	571	718	1,074	215	0
St. Lawrence	675	276	399	599	76	0
Saratoga	829	404	425	736	93	0
Schenectady	623	316	307	503	120	0
Schoharie	125	53	72	115	10	0
Schuyler	111	44	67	97	14	0
Seneca	250	135	115	215	35	0
Steuben	502	239	263	448	54	0
Suffolk	4,255	2,057	2,198	3,850	405	0
Sullivan	373	169	204	323	50	0
Tioga	212	88	124	172	40	0
Tompkins	366	172	194	301	65	0
Ulster	692	333	359	615	77	0
Warren	338	137	201	297	41	0
Washington	247	116	131	197	50	0
Wayne	497	248	249	417	80	0
Westchester	2,509	1,170	1,339	2,109	400	0

TABLE 33-4 (Continued)

County	Total Arrests	Age		Sex		
		16	17	Male	Female	Unknown
Wyoming	104	38	66	91	13	0
Yates	149	79	70	135	14	0
State Total	99,595	51,263	48,332	87,695	11,761	139

Table 33-5 gives a county breakdown for the charges in the age of jurisdiction arrests. Thirty-nine percent were "other general" offenses, including status and traffic offenses, and violations of local ordinances. While status offenses are referred by law enforcement agencies to juvenile courts, the arrest data nevertheless includes 16 and 17 year old youth who were arrested for such offenses. The offenses included in this category are specific to New York and many vary slightly from the offenses included in this category in other states. The second largest category (28 percent) were property offenses, including burglary, larceny, and auto theft. Twenty-one percent were public order violations, which included drug and alcohol offenses, malicious destruction and disorderly conduct. Twleve percent were personal offenses of murder, manslaughter, rape, robbery, assault, arson, kidnapping and weapons violations.

The disproportionate representation of the five counties comprising New York City was most evident in offenses against the person. While the city has about 36 percent of the state's juvenile population eight to 17 years of age, it accounted for 64 percent of the state's personal offenses. This includes 81 percent of the murder and manslaughter charges, and 83 percent of the robberies. Property offenses in New York City are more in line with juvenile population, with its 40 percent of all such offenses being roughly equal to its estimated juvenile population.

TABLE 33-5. NEW YORK: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

		Offenses[a]									
County	Total Arrests	Murder/ Man-slaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General[b]
Albany	1,457	0	7	30	50	22	24	152	352	519	301
Allegany	136	0	0	1	7	0	3	43	27	43	12
Bronx	11,062	28	54	789	147	361	172	820	1,340	1,058	6,293
Broome	811	0	0	3	23	3	11	109	219	305	138
Cattaragus	516	0	0	10	12	4	6	65	110	195	114
Cayuga	312	0	0	1	20	3	5	31	106	102	44
Chautauqua	456	0	0	4	31	0	4	37	127	168	85
Chemung	435	0	1	0	17	6	6	79	138	136	52
Chenango	353	0	0	1	5	4	6	25	115	135	62
Clinton	317	0	0	1	26	1	6	63	102	86	32
Columbia	277	0	0	0	13	2	4	43	63	105	47
Cortland	268	0	2	3	9	2	9	27	90	100	26
Delaware	228	0	0	0	19	1	3	38	51	89	27
Dutchess	869	1	0	6	38	19	21	143	218	312	111
Erie	2,785	5	9	83	111	103	57	411	849	829	328
Essex	220	0	0	2	20	2	9	52	43	67	25
Franklin	358	0	0	0	20	8	3	61	64	161	41
Fulton	287	0	0	0	9	2	0	26	53	130	67
Genesee	265	0	1	1	9	7	1	12	74	105	55
Greene	212	0	0	1	9	7	10	41	45	76	23
Hamilton	35	0	0	0	1	0	0	9	7	11	7
Herkimer	170	0	0	1	4	4	3	22	47	67	22
Jefferson	436	0	0	6	14	5	5	97	97	165	47
Kings	18,921	34	54	1,434	334	573	294	1,469	2,873	2,508	9,348
Lewis	41	0	0	0	1	1	1	7	15	6	10

TABLE 33-5 (Continued)

		Offenses[a]									
County	Total Arrests	Murder/ Man-slaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General[b]
Livingston	374	0	1	0	6	1	6	45	106	149	60
Madison	383	0	0	0	22	3	7	64	85	152	50
Monroe	3,692	1	16	104	241	40	64	407	1,179	1,186	454
Montgomery	153	0	0	0	9	8	3	18	36	60	19
Nassau	3,166	1	3	106	105	67	69	549	931	749	586
New York	20,596	11	35	775	282	315	202	484	2,257	2,334	13,901
Niagara	768	0	0	11	38	10	11	116	187	237	158
Oneida	725	1	0	14	58	6	9	138	196	208	95
Onondaga	2,018	3	2	55	91	33	41	314	584	654	241
Ontario	345	0	0	4	14	2	1	54	95	116	59
Orange	1,459	0	5	19	88	50	28	234	381	471	183
Orleans	150	0	0	1	12	4	2	18	55	47	11
Oswego	475	0	0	2	15	3	8	106	103	175	63
Otsego	160	1	0	0	14	2	0	26	52	49	16
Putnam	411	0	0	1	9	13	3	53	88	133	111
Queens	7,596	7	26	549	203	320	122	645	1,204	1,204	3,316
Rensselaer	681	0	0	5	53	11	13	107	123	291	78
Richmond	1,070	5	4	75	58	47	24	110	192	221	334
Rockland	1,289	0	0	10	76	36	32	91	311	427	306
St. Lawrence	675	0	0	1	31	3	17	97	150	273	103
Saratoga	829	0	2	9	22	17	9	87	209	302	172
Schenectady	623	0	0	12	26	7	4	71	172	240	91
Schoharie	125	0	0	0	3	0	3	25	22	45	27
Schuyler	111	0	0	0	1	0	2	10	12	39	47
Seneca	250	0	1	0	8	0	0	47	67	88	39

TABLE 33-5 (Continued)

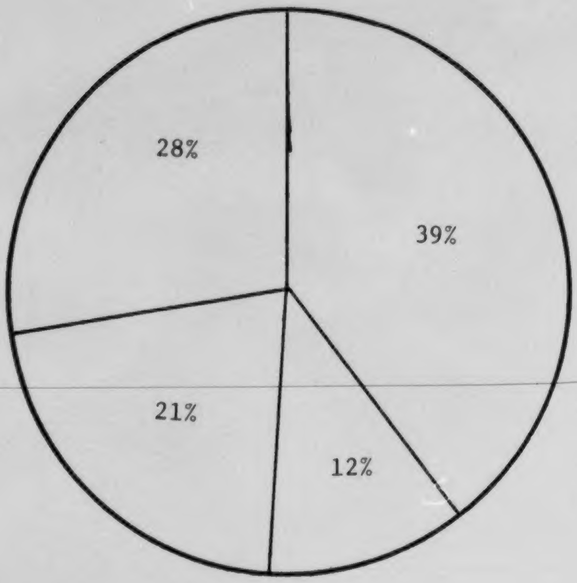
		Offenses[a]									
County	Total Arrests	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General[b]
Steuben	502	0	0	5	17	2	4	88	138	145	103
Suffolk	4,255	4	4	100	232	82	84	1,033	916	1,450	350
Sullivan	373	0	2	5	24	11	4	55	120	110	42
Tioga	212	0	0	3	3	1	4	18	55	68	60
Tompkins	366	0	0	0	20	1	7	38	119	110	71
Ulster	692	2	0	14	27	14	7	77	161	207	183
Warren	338	0	0	0	11	3	3	57	110	121	33
Washington	247	0	4	4	10	11	1	26	37	103	51
Wayne	497	0	1	3	22	5	8	98	112	176	72
Westchester	2,509	1	9	104	108	57	29	236	726	855	384
Wyoming	104	0	0	0	1	10	3	17	20	43	10
Yates	149	0	0	2	11	3	2	26	32	55	18
State Total	99,595	105	243	4,370	2,920	2,338	1,499	9,567	18,568	20,771	39,214

a. Only most serious offense per individual listed.

b. The offenses included in this category are specific to New York and may vary slightly from the offenses included in this category in other states.

Figure 33-3 graphically portrays the interrelationship of personal offenses to other types of offenses for which 16 and 17 year olds were arrested. Unlike the juvenile offender data, personal offenses account for only 12 percent of the total, with the five "violent" offenses accounting for about 58 percent of the crimes against persons or seven percent of all arrests.

FIGURE 33-3. NEW YORK: PERCENTAGE OF YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE CATEGORY) IN 1978



Offenses[a]

Personal	12%
Property	28%
Public Order	21%
Other General	39%

N= 99,595

a. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent seven percent of all offenses in the state.

Table 33-6 offers a slightly different view of the breakdown of offenses, giving more detail as to individual charges.

TABLE 33-6. NEW YORK: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE TYPE AND FREQUENCY) IN 1978

Types of Offenses	Violent Offense Subtotals	Offense Category Subtotals	Totals
PERSONAL OFFENSES			11,475
Violent Offenses		7,056	
Murder	98		
Manslaughter	7		
Rape	243		
Robbery	4,370		
Aggravated Assault	2,338		
Arson		176	
Kidnapping		8	
Assault/Battery		2,920	
Other Personal		1,315	
PROPERTY OFFENSES			28,135
Burglary		9,567	
Larceny		11,473	
Auto Theft		2,691	
Trespassing		4,404	
Other Property			
PUBLIC ORDER OFFENSES			20,771
Drug Violations		6,277	
Liquor Violations		1,071	
Other Public Order		13,423	
OTHER GENERAL OFFENSES			39,214
Status Offenses[a]		422	
Traffic		824	
Offenses Against the Family		127	
Other General[b]		37,841	
TOTAL OFFENSES			99,595

[a] These arrests may have been made for status offenses occurring before these youth attained majority or for offenses so designated which do apply to adults.

[b] According to state sources, the large majority of the offenses in this category are traffic violations. The offenses included in this category are specific to New York and vary from the offenses included in this category in other states.

RESULTS OF ON-SITE INTERVIEWS

Academy staff conducted on-site interviews with criminal and juvenile justice specialists in several counties (Albany, Erie, Onondaga, and Warren) in addition to people in several of New York City's boroughs. Thirty-four interviews were conducted in November, 1979, among family and criminal court judges, county and district attorneys, corrections officials, public defenders, legislators and legislative staff, juvenile justice researchers, and youth advocates. They were asked to respond to questions relating to the effects of trying youth as adults in New York, the comparative differences between adult and juvenile court procedures, and changes which they might recommend.

It should be pointed out, at the beginning, that while most respondents were very knowledgeable about the laws and events in New York, few of them could objectively relate them to practices in other parts of the country. For example, it was extremely difficult for most interviewees to even think hypothetically about treating 16 and 17 year olds as juveniles.

Other idiosyncracies became apparent as well. While knowledgeable about the 1978 and 1979 amendments to the state penal code, few people had enough first-hand experience with them to be able to comment upon their effects. A frequent response was that it was "too early" to tell what impacts would occur. It was also clear that everyone understood that the executive and legislative motives for pushing for those amendments were based upon events in New York City, where 80 to 90 percent of the state's violent crimes occur. It was the general feeling outside New York City that, as profound as these statutory changes appear to be, they would seldom be used in New York's 57 counties outside the city.

One last caveat, with regard to the frame of reference of New York respondents: most interviewees were aware of the state's *youthful offender* laws (which provides for less severe dispositions in criminal courts) as well as the possibility of confinement of *juvenile offenders* under 16 years of age only in DFY facilities. Therefore, the generally perceived severity of so many juveniles and youth in the adult court system was muted by the effects of the correctional dispositions available to adult court judges.

Perceived Effects on the Court System of Trying Youth as Adults

Respondents to the survey suggested that, even though the number of juvenile offenders convicted in adult courts is small, since most of them are either dismissed or removed to juvenile court, the whole court system is being affected by the 1978 legislation.

Plea bargaining has become the rule of doing business under the juvenile offender provisions. There was no need for plea bargaining before the 1976 and 1978 legislation: the forum was a foregone conclusion. Juvenile offenders are now subject to public trials and media coverage. Even when cases are removed to juvenile courts, the names of the juveniles and the description of the crimes frequently are covered in the news media. Early labeling of these youth as criminals can result. Interviewees felt that it is difficult to prosecute "children" in criminal courts. The effect juvenile offenders have upon jurors makes it difficult to get a fair trial from the prosecutorial standpoint. On the other side, the lack of credible peer group witnesses increases the problems of defense preparation. Some respondents believed that there is now a greater tendency in juvenile courts to dispose of delinquency cases by ordering confinement, due to the political climate. The suggestion was made that this could result in increased commitments to the Division for Youth and for more intensive dispositions generally. According to respondents, bail is now becoming part of juvenile court practices, even if only used for those juvenile offenders removed to juvenile courts when bail had been set prior to the removal. It was believed that the use of bail would expand in juvenile courts, perhaps extending to all designated felony cases.

It is also perceived to be more difficult to get, designated felony adjudications in juvenile courts after going through the adult court process. It is difficult to get witnesses and victims to appear, even when they do not "get lost," for a second round of hearings. However, statistically, this does not seem to be a significant problem. The statewide adjudication rate in juvenile courts is reportedly higher than the conviction rate in adult courts for similar offenses. In fact, when the ratio of felony arrests to felony convictions is approximately 12 to one in adult courts, the alleged difficulties in administering the designated felony laws may not be very remarkable.

The relatively low number of juvenile offenders eventually prosecuted in the adult courts was generally viewed as having little impact on either the lower-level trial courts or on the supreme courts. However, several interviewees pointed out the additional costs of administering the juvenile offender bill, because of the high percentage of cases referred back to juvenile courts. Instead of creating a more efficient way of dealing with youth accused of serious crimes, the legislature succeeded, according to these interviewees, in guaranteeing two trials instead of one.

Several respondents held the belief that the situation since the 1978 and 1979 amendments has actually been better for the juvenile courts. By removing the cases of violent crimes by older juveniles (age 13, 14, and 15) from the original jurisdiction of juvenile courts, public attacks on juvenile courts have lessened. They felt that these courts could now return to the work of juvenile rehabilitation by focusing on juveniles more amenable to change. The data reveal, however, that the actual effect on juvenile court caseloads may be minimal due to the high numbers of removals from adult to juvenile courts. Furthermore, the distinctions between the two court systems may be harder to identify today, given such statutory changes as the designated felony law, the right to photograph and fingerprint delinquents, and the stated public policy that juvenile courts exist for the protection of the community.

However, some of the respondents argued that the juvenile offender provisions will needlessly expose children to the adult court process, but many of these youth will not be retained in the adult court system. This involves duplication of court efforts and a waste of resources. It was also pointed out that adult court personnel need additional training to understand and to implement the juvenile offender provisions.

In connection with the effects on the court system, the role of the prosecutors has obviously taken on new dimensions due to the fact that they and the police determine the charges which, in turn, determines the forum for many 14 and 15 year olds.

Additional responsibilities and tasks are placed upon the prosecutors in trial preparation. Generally, weak cases will be referred to juvenile courts rather than being dismissed at the adult court level. This results from the general recognition that cases must be better prepared at the adult court level because of rules of criminal procedure. District attorneys indicated that they are filing only their better cases against juvenile offenders in adult courts.

Perceived Effects on the Corrections System of Trying Youth as Adults

The impact of trying youth as adults on the corrections system has several aspects in New York. In the adult system, there are thousands more younger adults than would be found in states having an 18 year age of criminal responsibility. However, that was not viewed as an unusual burden, due to the fact that 16 and 17 year olds have been in the adult system since 1922. The absence of significant numbers of convictions of juvenile offenders has meant, as a result, no real impact on adult corrections. The real difficulties have been felt in the juvenile justice system.

In 1979, juvenile corrections agencies, such as DFY, had to provide institutional care and programming for four legally distinct groups:

- Juvenile Delinquents
- Designated Felons
- Juvenile Offenders
- Youthful Offenders

While the vast majority of commitments originate from the juvenile courts, the bureaucratic complexity of serving both court systems is still present. Sentence length, administrative transfer procedures, "good time," moving "through the levels," and parole are but a few of the decisions that must be applied discriminately, according to the types of commitment. For DFY, the new system means, also the likelihood of:

- Larger populations in confinement;
- Increased lengths of confinement;
- Increased legal work;
- The need for more long-term programs;

- More segregation of populations by legal status; and
- The need for more facilities.

The DFY was understandably more articulate about these problems than were many other respondents. The DFY respondents felt that the distinctions made in different parts of the state are blurred. Some juvenile offenders may appropriately be placed with juvenile delinquents. On the other hand, some designated felons will have histories similar to juvenile offenders. DFY personnel indicated that, within the restrictions of the law, it will tend to ignore whether juveniles have been tried in adult or juvenile courts in making placement decisions.

In the 1979 budget, DFY requested and received funding for the development and operation of a 40-bed facility on the grounds of the former Highland Training School and for the planning of 150 additional service placements. DFY officials stated, in the 1979-80 plan, that the 1978 act and the state's criminal statutes drastically changed the juvenile justice system and will significantly increase the number of youth requiring secure confinement. This has, in fact, occurred. At the time that this case study was written, the agency had a deficit of about 100 beds (with youth backed up in detention centers). The agency's most recent plans, as submitted to the federal court in the case of *Ronald W.* v. *Hall*, project an even greater deficit over the next few years, even if all currently funded projects are operational.[31]

The question of detaining juvenile offenders remains a continuing problem. Should they be detained in jail with adult offenders or in detention with juvenile delinquents? In New York City, juvenile offenders are commingled with juvenile delinquents at the Spofford Detention Center. When the law was first passed, they were held on Rikers Island, an adult facility, but in a special facility separate from 16 and 17 year olds. In other counties, they are sometimes held in jails, separate from adults.

Perceived Effects on the Offenders of Being Tried As Adults

The consensus regarding the 1978 and 1979 acts was that the law was not intended to do anything for the youth. The law was passed to benefit the public. Even so, there may be some side benefits for the youth.

A number of respondents cited advantages to being tried in adult courts which, they felt, would occur unevenly across the state:

- Higher levels of legal protection, including jury trials and bail;

- Credit for jail time;

- Judges and defense attorneys who are "better trained" (especially in areas outside New York City where juvenile delinquents do not enjoy representation comparable to New York City's Legal Aid Society);

- Decisions made in accordance with legal principles; and

- Shock value resulting from the formal processing in adult courts.

For many respondents, however, the disadvantages to the youth themselves far outweighed the benefits. They cited two features of the adult system that they felt were harmful:

- Sentencing can result in longer periods of incarceration, with far fewer available services at least at certain periods of their confinement; and

- Labeling youth as criminals occurs at much earlier periods in the youth's lives, particularly since the arrests and trials of juvenile offenders receive much media coverage.

Perceived Effects on the Public of Trying Youth As Adults

According to interviewees in New York, the 1978 and 1979 legislation resulted from an unusual combination of circumstances. There was a growing lack of public confidence in the ability of family courts (particularly in New York City) and in the state Division for Youth to effectively control the predatory behavior of serious juvenile offenders. Violent crime continued to escalate, and the juvenile justice system seemed to be powerless to stop it. The timing of this public outcry for more effective controls coincided with the decision by the governor to veto a capital punishment bill that had been passed after bitter debate in the legislature. As part of a "package," which included the veto of capital punishment, the governor included the transfer of 13, 14 and 15 year olds accused of violent crimes to the jurisdiction of adult courts. According to several sources, the governor's office and the state district attorney's association drafted the juvenile offender provision of the Omnibus Crime Bill of 1978 over a weekend and sent it to the legislature, where it passed almost immediately. There was no time for public hearings, alternate suggestions, or for opponents to take action. It appeared that New York was "getting tough on crime" and was serious about the effects of both punishment and deterrence. Most respondents reflected popularly held beliefs about the relative effectiveness of the juvenile and adult courts in New York. "The only real justification for any criminal sanction is deterrence. If kids believe they will get more than a wrist tap, they may think twice before committing a crime," was a viewpoint often heard.

The advantages of the juvenile offender provisions that seem to inure to the public are greater public safety, more accountability, longer incapacitation, likelihood of dismissal of inappropriate cases, and, above all, the perception that "something is being done." "It has increased the public's confidence in the administration of justice," reported several interviewees.

There was general agreement that for juvenile offenders, rehabilitation is not being considered; that society is giving up on them at age 14 or 15. Respondents differed as to whether that was a good idea. Some felt that New York may be writing off a part of the next generation because nothing good could occur for these youth in this situation. New York as a result, may be contributing to many years of subsequent arrests and incarceration.

Almost every person interviewed felt that longer sentences would result for the select group of youth tried in adult courts as juvenile offenders than would be received in juvenile courts. Further, despite the special handling of serious felonies, either as juvenile offenders or as designated felons, many of the interviewees felt that commitment to DYS was no insurance of incapacitation of youthful criminals. It was felt that they were not kept long enough in secure placement to guarantee removal of dangerous youngsters from society and that, once they were released, the parole system was inadequate to assure intensive supervision. This was offered as a partial explanation for the ease in passing the 1978 juvenile offender provision.

Only careful monitoring over the next several years of those youngsters sentenced under the juvenile offender act will answer the question of which sentence ends in longer periods of incapacitation. The important point for now is that most people believe it will result in longer incarceration for the most dangerous youth. This perception is held both by those individuals supportive of longer incarceration and the juvenile offender provisions and those who are opposed to both. Even though family courts and DFY have the discretion to incapacitate as long as adult courts, the point must be made that most people felt that neither family courts nor DFY would use that discretion. There was also general agreement that the sentences juvenile offenders received in adult courts were shorter than adults would receive for the same offense.

Sixteen and 17 year olds were discussed separately from juvenile offenders. It was stated that most 16 and 17 year olds were treated as youthful offenders and, therefore, subject to different sentences than older adults. However, since a person is only eligible for youthful offender status once, recidivist 16 and 17 year olds are sentenced as adults. With the 1979 amendments that permit youthful offender treatment for juvenile offenders (there are some eligibility restrictions), the number of 14 and 15 year old youth who will have used the one-time youthful offender status at an earlier age and then become ineligible as adults should increase over time.

Perceptions of Factors to be Considered in the Referral of Youth to Adult Courts

New York's present system of excluded offenses puts primacy on one factor--the severity of the offense--in determining whether a juvenile will have his case heard initially in adult courts. However, when asked under what conditions should youth be tried in adult courts, the most common response of our interviewees was the youth's past record. Other factors mentioned, in decreasing order of frequency, included: level of criminal sophistication, severity of offense, lack of potential for rehabilitation, dangerousness, age, and lack of available or appropriate services in family courts.

This listing of factors and accompanying comments indicate support, among juvenile justice specialists at least, for a system which allows greater sensitivity to the characteristics of the youth and the circumstances of the offense than is permitted under excluded offense provisions. On the other hand, none of the respondents questioned that adult court is the most appropriate forum for certain juveniles.

Perceptions of Needed Changes in the Referral of Youth to Adult Courts

There were three distinct perspectives on how juveniles should be handled in New York.

- A few interviewees felt that the juvenile offender provisions, with the possibility of removal to juvenile courts, was a desirable process. Outside of New York City, it was felt that this gave the district attorneys and adult courts another option that will only be used in rare, heinous cases, and it may act as a deterrent to some youth. Besides, most youth arrested for juvenile offenses would have been charged under designated felony laws in juvenile courts if the juvenile offender laws didn't exist.

- Most people felt that a judicial waiver provision, allowing the juvenile courts to remove to adult courts the few youngsters inappropriate for juvenile court, was the preferred approach. The present method increases duplication and, therefore, can be very expensive in both court time and resources. Judicial waiver is much more direct. Advocates of judicial waiver thought that, in the waiver decision, consideration should be given to aggravating factors about both the offense and the actor. They also tended to feel that those waived should be sentenced under a youthful offender-type provision. There was limited feeling expressed that the maximum age of initial juvenile court jurisdiction should extend to 18, with the waiver age for murder at age 15.

- The third perspective stated was that it does not matter where juveniles are tried. By the time they are 13, they know right from wrong. The consideration should be to provide, for example, educational and psychological services for them. What are needed are facilities and treatment resources to deal with serious juvenile offenders. This view was particularly prevalent in New York City.

There was support for having district attorneys, instead of county attorneys, involved in family court cases. It was stated that the district attorney's involvement results in the screening out of unsound cases, the speeding up of the process, and ultimately, the ensuring of a "better grade of justice."

In addition to formal interviews, the Academy also sought the written views of other interested groups, one of which was the Citizens Committee for Children of New York, Inc. In 1978, the Committee had established a citizens' task force to monitor the new juvenile offender law. After studying and observing all aspects of the process for six months, they concluded that the experience with this new law has been unsatisfactory on every count. The process was long; the delays interminable. Few of these children were detained awaiting hearings. They stated:

> It surely was not accidental that the policical leaders and the legislative body of the state did not choose to strengthen the legal process created especially for children. The conclusion must be drawn that the family court did not enjoy the public confidence that would have prompted politicians to look to that court for public reassurance and political remedies.[32]

The Committee's task force report made a number of recommendations, among them, that:

- The juvenile offender law be repealed;
- Exclusive jurisdiction of juvenile offenders up to the 16th birthday be restored to the family court;
- The family court be invested with greater dispositional powers and a tightening of its procedural safeguards;
- A citizen board be appointed to oversee the work of the family court;
- Adequate resources be supplied to the family court to investigate, diagnose, and provide services to children and their families, and;
- The bench be appointed with special care and be large enough to properly conduct the business of the family court.

SUMMARY AND CONCLUSIONS

The New York juvenile justice system, characterized by its lower age of criminal jurisdition (16 years), its utilization of excluded offenses rather than a judicial waiver mechanism, the possibility of removal to juvenile court, and the applicability of designated felony provisions once there, is of great interest as a unique means of dealing with juvenile crime.

The present New York system seems to be a highly charged political response to widespread attacks that the juvenile courts were not stopping a perceived rising tide of juvenile crime, most notably in the New York City area. The present system, however, faces the severe criticisms that it is wasteful, is needlessly exposing many youth to the adult system, and that it is not accomplishing what it was intended to do (especially given the large number of youth receiving community sentences).[33] It must be noted that the juvenile offender provisions are intended primarily for and mostly affect New York City. Indeed, the most striking aspect of data collected by the Academy during 1978 is the very large number of youth in New York City who are becoming involved in the adult courts and subsequently removed to juvenile courts. In addition, the present process has presented many problems in regard to corrections and has placed a great deal of additional work on the district attorneys. Finally, the large number of juvenile offenders removed from adult courts to juvenile courts has markedly diminished the intended relief in the case loads of the juvenile courts.

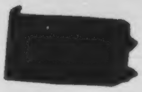
Opinions gathered from our respondents and other sources indicate the following emerging consensus:

- That New York should retain its current age of initial criminal court jurisdiction of 16 years of age;
- That a judicial waiver mechanism should replace the current juvenile offender provisions, thus allowing dangerous juveniles to be removed from juvenile courts to adult courts, instead of the other way around; and
- That longer periods of commitment, modeled after the designated felony act, should be provided for adjudicated delinquents.

FOOTNOTES

1. Childrens Court Act, Chapter 547, Section 5, Subd. 1, Laws of 1923.
2. childrens Court Act, Chapter 393, renumbered Section 6, Subd. 1, Laws of 1930.
3. Childrens Court Act, Chapter 6, renumbered Section 712(b) and 713, Laws of 1962.
4. Childrens Court Act, Chapter 547, Section 2(a), Laws of 1922.
5. Family Court Act, Chapter 555, Section 715, Laws of 1948.
6. Family Court Act, Chapter 553, Section 312-c(a-f), Laws of 1948.
7. Family Court Act, Chapter 680, Section 87, Laws of 1967.
8. Family court Act, Chapter 686, Laws of 1962.
9. Governor's Panel on Juvenile Violence, "Report to the Governor" (Albany, N.Y.: 1976) p. 5-6.
10. Family Court Act, Chapter 878, Sections 712 and 75 3-a, Laws of 1976, as amended 1978.
11. McKinney's Constitutional Laws of New York Annotated, Penal Code, Chapter 481. Laws of 1978 and amendments, Laws of 1979, Chapter 411.
12. McKinney's Constitutional Laws of New York Annotated, Penal Code, Article 720, as amended by Laws of 1979.
13. Childrens Court Act, Chapter 394, Section 6(1), Laws of 1930.
14. Family Court Act, Section 753, Chapter 686, Laws of 1962 as amended by and renumbered 756, Laws of 1974 and amended by Laws of 1976.
15. Family Court Act, Chapter 686, Section 758, Laws of 1962, as amended by Laws of 1963, Chapter 477, Section 2.
16. Supra, note 10.
17. People v. Sykes, 239 N.E. 2d 182, 22 N.Y. 2d 159 (1968).
18. People v. Michael O., 239 N.E. 2d 729, 22 N.Y. 2d 831 (1968).
19. People v. Vidal, 257 N.E. 2d 886, 26 N.Y. 2d 249 (1970).
20. People v. Michael A. C., 261 N.E. 2d 620, 27 N.Y. 2d 79 (1970).
21. People v. Cook, 338 N.E. 2d 619, 37 N.Y. 2d 591 (1975).
22. People v. Gina M. M., 357 N.E. 2d 370, 40 N.Y. 2d 595 (1976).
23. People v. Drummond, 40 N.Y. 2d 990 (1976).
24. Matter of Vega v. Bell, 415 N.Y.S. 2d 424 (1979).
25. Matter of Quinton A., 49 N.Y. 2d 328 (1979).
26. Family Court Act, Section 712.
27. McKinney's Constitutional Laws of New York Annotated, Penal Code, Section 30.00.
28. Family Court Act, Section 241.
29. Family Court Act, Sections 712 and 720.
30. McKinney's Constitutional Laws of New York Annotated, Penal Code, Article 515-b.
31. Ronald W. v. Hall, 80 Civ. 1796 (S.O.N.Y., Cannor, Judge). The issue was how long a juvenile delinquency could be held in secure detention awaiting transfer to a DFY placement after disposition in Family court. DFY agreed to remove delinquents committed to them within fifteen days after sentencing. Crespo v. Hall addresses the same issue in the case of juvenile offenders. This case is scheduled to be heard the end of 1981.
32. The Citizens Committee for Children of New York, Inc. In Search of Juvenile Justice, April, 1979, p. 29.

33. See, among sources other than those already mentioned, *New York Times* editorial, "A Paradox in Juvenile Crime," August 20, 1980 and "Treating Juveniles as Adults in New York: What Does it Mean and How is it Working?" by Martin Roysher and Peter Edelman and "Black Crime and the New York State Juvenile Offender Law: A Consideration of the Effects of Lowering the Age of Criminal Responsibility" by George E. Hairston. Both articles found in Hall, Hamparian, Pettibone and White, *Major Issues in Juvenile Justice Information and Training: Readings in Public Policy*, The Academy for Contemporary Problems, c1981.



PENNSYLVANIA PROFILE

ACKNOWLEDGMENTS

For their assistance in providing data on transfers in Pennsylvania, the Academy expresses its appreciation to Robert Sobolevitch, Director, Bureau of Youth Services, Department of Public Welfare and to David McCorkle, Juvenile Justice Specialist, Pennsylvania Joint Council on Criminal Justice, Inc. A very special expression of gratitude is owed to George F. Grode, Executive Director, Pennsylvania Commission on Crime and Delinquency, for obtaining data on excluded murder cases and for reviewing this profile. In addition, the Academy thanks the many state and local officials who willingly cooperated by providing the necessary data. The staff would also like to thank the following persons who consented to personal interviews during the on-site phase of the research.

Ken Adami, Legislative Staff
Pennsylvania Legislature
Harrisburg

Jim Anderson, Legislative Consultant
State Juvenile Court Judges
Commission
Harrisburg

Clair Capristo, Deputy District
Attorney of Operations
District Attorney's Office
Allegheny County
Pittsburgh

Sam Caltagirone
Community Relations Division
Pittsburgh Police Department

Joseph M. Casy, Public Defender
Philadelphia

Lawrence Claus, Chief Trial Deputy
District Attorney's Office
Allegheny County
Pittsburgh

Kathy Clupper, Legislative Assistant
Pennsylvania Legislature
Harrisburg

Honorable Robert E. Dauer
Criminal Division
Allegheny County Court of Common Pleas
Pittsburgh

Rocco Donatelli, Deputy Administrator
Juvenile Branch
Family Division
Philadelphia Court of Common Pleas

Adine Duron, Assistant to the
Executive Director
Pennsylvania Juvenile Justice Center
Philadelphia

Dennis Echard, Deputy Superintendent
for Treatment
Camp Hill Correctional Institution

Pat Evey, Director
Juvenile Justice Center of
Western Pennsylvania
Pittsburgh

Richard Gable, Director of Research
National Center for Juvenile Justice
Pittsburgh

John Hagerty, Deputy for Communications
District Attorney's Office
Philadelphia

Edward Jordan, Deputy District Attorney
Dauphin County
Harrisburg

Kevin Longenback, Legislative Staff
Pennsylvania Legislature
Harrisburg

Paul Lutty, Juvenile Public Defender
Allegheny County Public Defender's Office
Pittsburgh

Sgt. Herman Mitchell
Community Relations Division
Pittsburgh Police Department

Honorable Frank J. Montemuro, Jr.
Family Division
Philadelphia Court of Common Pleas

Charles Morris, District Attorney
Greene County
Waynesburg

Lester Nauhaus, Director
Allegheny County Public Defender's Office
Pittsburgh

Ernest S. Patton, Superintendent for Treatment
Camp Hill Correctional Institution

Honorable David N. Savitt
Trial Division
Philadelphia Court of Common Pleas

John A. Stets, Public Defender
Greene County
Waynesburg

Honorable Patrick R. Tamilia
Allegheny County Juvenile Court
Pittsburgh

Harry Tishler, Chief
Juvenile Court Unit
District Attorney's Office
Philadelphia

Honorable Glenn Toothman
Greene County Court of Common Pleas
Waynesburg

METHODOLOGY

Data were collected in several different ways in Pennsylvania, depending upon the type of information sought. Phase I (frequency) data for 1978 judicial waivers were obtained from two state sources. First, a report prepared by the Pennsylvania Joint Council on the Criminal Justice System, Inc. was utilized, followed by a report provided by the Pennsylvania Department of Justice, Juvenile Court Judges' Commission. These two data sources, with information broken down by county, were not identical in their frequency totals. Academy staff, upon receipt of the former report, contacted local sources for Phase II data--demographics, offenses, judgments, and sentences--in the ten percent most populous counties and in those counties that were reported to have referred five or more youth to adult court through judicial waiver in 1978. Juvenile probation departments were the primary contacts for these locally reported data. It should be noted that these local sources did not always report the same number of judicial waivers as the first or second state source.

Murder is an excluded offense from juvenile court jurisdiction in Pennsylvania and, therefore, required a different data collection procedure to obtain the frequency (Phase I) of youth automatically tried in adult courts in 1978 for this offense. The Pennsylvania Commission on Crime and Delinquency provided arrest data from the Pennsylvania State Police for counties reporting murders in which the arrested suspects were under 18 years of age. Prosecutors in those identified counties were then contacted by Academy staff for Phase II data. However, a few of these local contacts reported a different frequency of cases, the information coming from court filings and not arrests.

Due to the variations in the different state and local data sources reports, for both judicial waivers and excluded offenses, and to aid in a fuller understanding of the effects of these legal mechanisms in Pennsylvania, all data reported to the Academy will be presented in this profile.

In addition to this census study, the Academy conducted on-site interviews in Pennsylvania. This state was selected from federal administrative region three for case study because:

- The state reflects a rural/urban mix with two major cities and many rural counties;
- It has the fourth largest population in the country;
- A study of transfers of youth to adult court in Pennsylvania from 1974 to 1977 was available from the Pennsylvania Joint Council on the Criminal Justice System; and
- Summary offenses by juveniles, at one end of the scale, and murder, on the other, are both excluded from juvenile court jurisdiction.

These factors, coupled with other social and legal characteristics, made Pennsylvania both typical in some regards and unique in others.

Consistent with the study design, interviews were conducted by the Academy in February 1980 in four locations: Dauphin County (Harrisburg), the location of the state capital; Philadelphia, the largest city; Greene County (Waynesburg), a representative county from the lower third of the population; and Allegheny County (Pittsburgh), because of its relative importance as the second largest city.

Interviews were conducted with judges, juvenile court personnel, county prosecutors, public defenders, state legislative staff, state juvenile and adult corrections administrators, juvenile justice advocates, juvenile justice researchers, and law enforcement officers. A standard interview format was utilized which directed the interviewees to respond to the relative advantages and disadvantages of trying youth in adult courts. Additional questions were asked concerning proposed or needed changes in the juvenile code, dispositional outcomes of youth tried as adults, and trends and influences in the state affecting the transfer issue. Interviewees were encouraged to provide additional reports, documents, and data which related to the issue.

HISTORY OF STATUTES RELATING TO JURISDICTION AND TRANSFER

Since 1903, murder has been excluded from juvenile jurisdiction in Pennsylvania. Individuals under 18 years of age charged with murder are automatically referred to the criminal courts. If the courts find that the defendant should be treated as a child, the case may be transferred to the juvenile courts.

The first juvenile justice legislation in this state didn't come into existence until 1903. Initially, jurisdiction over juvenile matters was delegated to courts of the quarter sessions. The act provided that children were delinquent if they were under 16 years of age and charged by parents or guardians with unmanageability, or were in violation of the laws of Pennsylvania or any ordinances of any municipalities or townships.[1]

In 1923 the first act dealing with the transfer of juvenile offenders to the adult criminal courts was passed. It provided that any child over 14 years of age who had been charged with any offense (other than murder) which was punishable by imprisonment in a state penitentiary, could be transferred to the district attorney, who would proceed with the case as if they juvenile court had never obtained jurisdiction, provided the judge of the juvenile court deemed it in the state's best interest.[2] When the official juvenile code was adopted in 1933, this provision was adopted without change as well as the continuance of the exclusion of murder from juvenile jurisdiction.[3]

In 1933, when the official juvenile statute was adopted, the juvenile courts were established as being the county juvenile court of Allegheny County, the Municipal Court of Philadelphia, and the courts of quarter sessions of all other counties. These courts were granted exclusive power over all adults charged with contributing to the delinquency of a minor as well as over all dependent, neglected, and delinquent children, except children charged with murder. The definition of delinquent children was broadened to encompass children who were habitually truant from school, or who habitually acted in a manner injurious or dangerous to the morals or health of themselves or others.[4] In addition, a new section was added to the statute for the immediate transfer to the juvenile courts of any person charged with a crime, other than murder, who, during pendency of the charge, was discovered to have been under the age of 16 at the time the crime was committed.[5]

In 1939, the age limitation for the definition of children was raised to 18 years of age.[6] In 1972, the original juvenile statute was again replaced. The definition of children broadened juvenile court jurisdiction to include youth up to 21 years of age, if they commit delinquent acts before the age of 18. The act of delinquency was both narrowed by adding summary offenses to offenses excluded from juvenile courts and broadened by including violations of federal laws and laws in other states.[7]

In addition, the juvenile courts became (and are still) divisions of the courts of common pleas and have exclusive jurisdiction in the following cases:

- proceedings in which children are alleged to be dependent or delinquent (except murder);

- proceedings in which children are transferred from another county or state;

- proceedings concerning the supervision of resident children convicted of offenses elsewhere; and

- proceedings transferred from the courts of criminal proceedings.

The issue of youth in adult courts was once again addressed at that time. Juvenile courts could transfer any juvenile offender charged with any criminal offense to the criminal courts. Reverse waiver provisions also were changed to permit criminal courts to transfer any youth back to juvenile courts if the person "appears to be a child," including individuals charged with murder.[8]

In 1976, an addition was made concerning the transfer of persons from courts of criminal proceedings. It now permits the courts of criminal proceedings to transfer to the juvenile courts for disposition a youth charged with murder but convicted of a crime less than murder.[9]

Therefore, the juvenile courts in Pennsylvania now have exclusive jurisdiction over all cases concerning persons under 18 years of age, unless that person is charged with murder or a summary offense, or unless the juvenile requests transfer to criminal court. On the other hand, if the criminal courts wish, jurisdiction of minors charged with excluded crimes, including murder, may be transferred to the juvenile courts.

Several title changes occurred from 1972 to 1978. In 1978, the definition of a delinquent act was modified by deleting the actions of habitual disobedience by a child to the requests of his or her parents as a type of conduct which constituted delinquency.[10]

CASE LAW SUMMARY

Since 1950, the Pennsylvania Supreme Court has ruled a number of times on issues regarding youth in adult courts, including the exclusion of murder from juvenile jurisdiction. The court, in In re Gaskins, held that juvenile courts (established by the legislature) did not have exclusive jurisdiction over juveniles charged with murder, since the constitutionally established courts of "oyer and terminer" were vested with exclusive jurisdiction over all murder cases, regardless of the age of the offender.[11] The court held that if the state, in a preliminary hearing in juvenile court, established a prima facie case against the juvenile, the juvenile courts must hold the accused for criminal prosecution. However, the court also held that the criminal courts could, if appropriate, transfer the case back to juvenile courts for delinquency proceedings. (See also, Commonwealth v. Moore, and Commonwealth v. Schmidt.)[12]

These holdings were reiterated in *Commonwealth* v. *Owens*, where the court held, additionally, that prosecution was not appealable. See also, *Commonwealth* v. *Croft*.[13]

In *Commonwealth ex rel. Riggins* v. *Superintendent of Philadelphia Prisons*, the court rejected the appellant's contention that he should have had a preliminary hearing on the charge of murder before a family court judge because of his age (17 years). The court held that since all of the formal trial courts had been consolidated into the Philadelphia Court of Common Pleas, the judge in question had jurisdiction to conduct a preliminary hearing. (See also, *Schmidt* and *Commonwealth* v. *Rice*.)[14]

In *Commonwealth* v. *James*, the court refused to apply *Kent* v. *United States* retroactively. The appellant therein claimed that he was unconstitutionally deprived of his right to counsel at the preliminary hearing in juvenile court on a murder charge. The court held that the appellant had failed to demonstrate any prejudice or lack of fairness as the result of the absence of counsel from the hearing.[15] Finally, in *Commonwealth* v. *Nole*, the court held that the appellant's mother was given sufficient notice of the transfer hearing on the murder charge, since she was in attendance at the detention hearing when the juvenile court announced the date of the transfer hearing.[16]

The exclusion of murder from juvenile court jurisdiction in Pennsylvania has also been ruled on by the U.S. Third Circuit Court of Appeals. In the habeas corpus case of *U.S. ex rel. Walter* v. *Maromy*, the third circuit, interpreting Pennsylvania law, held that a juvenile over 14 years of age charged with murder, and against whom a prima facie case had been made, must be proceeded against in criminal, not juvenile, court.[17]

The transfer hearing has also been the subject of state court rulings. In 1954, the Pennsylvania Supreme Court held, in *In re Holmes*, that transfer cannot take place after an adjudicatory hearing in juvenile courts.[18] The court also held, in *Commonwealth* v. *Ransom*, that statements made by a juvenile at a transfer hearing are inadmissible in the subsequent criminal trial on the murder charge.[19]

In *Commonwealth* v. *Frisby*, the court rejected the appellant's contention that he could not be tried as an adult for robbery and burglary (in addition to the murder charge), since the transfer statute required that the child in question be above the age of 14 years. The court based its holding on the fact that the statute applies as of the 14th birthday and that the appellant was 14 years, nine and one-half months old.[20] In *Commonwealth* v. *Crowson*, the court held that the recorded testimony from the appellant's prior adjudicatory hearing, where he entered a guilty plea, could be used to establish a prima facie case at a de novo certification hearing.[21] Two years later, in *Commonwealth* v. *Keefer*, the court held that where the delinquencies charged in the juvenile petition constitute an integral part of the one offense over which the juvenile court had no jurisdiction (murder), the juvenile court properly transferred all of the charges to the criminal division. See also, *Commonwealth* v. *Epps*.[22] In *Commonwealth* v. *Pyle*, the court applied the standards set forth in Kent to a "reverse waiver" proceeding in adult criminal courts. See also, *Commonwealth* v. *Batty*.[23] Finally, the court held, in *Commonwealth* v. *Griener*, that contrary to its holding in Pyle, the state had the burden of proving that the juvenile was nonamenable to treatment as a juvenile when filing for a motion for transfer of a juvenile to adult criminal courts.[24]

Juvenile Court Dispositional Options

Juveniles adjudicated to be delinquent may be placed on probation, at home or in foster care, or may be placed in a number of different types of public and private facilities. About one-half of the adjudicated delinquents, for whom confinement was ordered in 1978, were sent to facilities under the authority of jurisdiction of the Bureau of Youth Services, Department of Public Welfare (DPW). The other 50 percent of adjudicated delinquents were sent to privately operated, but publicly licensed and funded, facilities for delinquents. In 1980, the average length of stay was nine months.

Counties are charged for commitments made to DPW at the 50 percent level under Pennsylvania Act 148 provisions. Community-based residential placements are reimbursed by DPW, under Act 148, up to 50 to 75 percent of costs, depending upon the type of services provided.

The initiation of DPW-operated secure treatment programs for serious juvenile delinquents coincided with the closing of the cellblock for juveniles at Camp Hill in 1975. Since that time, the department has planned, developed, funded, staffed, and operated special programs in seven sites. The programs include a 68-bed coeducational facility (Cornwells Heights Youth Development Center), 15 to 20 bed facilities at Oakdale and Weaversville, and a secure forensic unit for 20 mentally ill youthful offenders at Norristown. The increase in secure beds for delinquents might be one explanation for the reduction in the number of juveniles transferred to criminal courts.[25]

Juveniles tried in juvenile courts cannot be sentenced or administratively transferred to the Department of Corrections.

PROCEDURES FOR TRYING YOUTH AS ADULTS IN 1978

Court Organization

The highest court of general jurisdiction in Pennsylvania is the Court of Common Pleas, with original jurisdiction over all criminal cases and exclusive jurisdiction over juvenile delinquency, dependency, and neglect cases. The juvenile court division of these courts has jurisdiction over juveniles under the age of 18 years or under the age of 21 who have committed an act of delinquency before reaching the age of 18.[26] These divisions will hereinafter be referred to as juvenile courts.

Minor criminal cases in Pennsylvania are heard in the justice of the peace courts. These courts have original criminal jurisdiction, including over persons under 18 years of age, over traffic and other offenses punishable by a fine of not more than $500 or a jail sentence not exceeding 90 days. Felony and misdemeanor preliminary hearings are also held in these courts.

Philadelphia's municipal court has limited criminal jurisdiction, including summary offenses. Pittsburgh's magistrate court hears cases involving misdemeanors and violations of city ordinances, including traffic cases.

An overview of Pennsylvania's court jurisdiction over juveniles appears below:

PENNSYLVANIA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic[a]
Juvenile Court Divisions of Courts of Common Pleas	Courts of Common Pleas	Justice of the Peace Courts[b] Municipal Court (Philadelphia) Magistrate Court (Pittsburgh)

a. Summary offenses by juveniles, including traffic violations, are handled in adult courts.

b. As of 1980, these courts have been renamed "District Justice Courts." The name used here is appropriate to the 1978 data year.

Transfer Process

The initial age of juvenile court jurisdiction in Pennsylvania extends to 18 years of age. There are two legal mechanisms utilized, i.e., judicial waiver and excluded offenses, for trying youth as adults, which actually cover four different procedures.

Judicial Waiver

In Pennsylvania, juveniles who are 14 years of age at the time of the alleged conduct may be judicially transferred to adult courts. A hearing on whether the transfer should be made must be held, with notice in writing of the time, place, and purpose of the hearing given to the juveniles and their parents, guardian, or other custodian at least three days before the hearing. At the hearing, the juvenile courts must find that there is a prima facie case that the child committed the delinquent act alleged, and that the delinquent act would be considered a felony if committed by an adult. In addition, it must be found that there are reasonable grounds to believe all of the following:

(a) That the child is not amenable to treatment, supervision or rehabilitation as a juvenile through available facilities. In determining this, the court may consider age, mental capacity, maturity, previous records, and probation or institutional reports;

(b) That the child is not committable to an institution for the mentally retarded or mentally ill;

(c) That the interests of the community require that the child be placed under legal restraint or discipline or that the offense is one which would carry a sentence of more than three years if committed by an adult.[27]

Also in Pennsylvania any person, including the accused juvenile, may request the transfer hearing. If granted, the normal procedures related to judicial transfer apply.[28]

Excluded Offenses

The two Pennsylvania provisions which exclude certain juveniles from juvenile court jurisdiction pertain to the crime of murder and to very minor crimes, known as summary offenses. Youth charged with murder are automatically referred to criminal courts in Pennsylvania, since murder is excluded from original juvenile court jurisdiction.[29] Youth may be referred back to juvenile courts for trial if the adult courts decide that they should be tried as a child, or for disposition if convicted of lesser crimes, such as manslaughter.[30]

Summary offenses are also excluded from juvenile court jurisdiction in Pennsylvania. Summary offenses by juveniles are heard in the same courts hearing adult summary cases, unless the youth under 18 years of age fails to pay a fine levied by the adult courts. In that event, notice of this fact is certified to the proper juvenile court. Summary offenses include such acts as vandalism, drunkenness, disorderly conduct, harassment and traffic violations, i.e., offenses which usually are handled through the use of summons or tickets, rather than arrest.[31]

In 1979 and 1980, several competing forces sponsored legislation to amend the juvenile act. The most controversial one was S.B. 829, which would have shifted the burden of proving nonamenability from the prosecutors to the juvenile defendants. In addition, a "shopping list" of specific crimes would have required automatic transfer to criminal courts when the juveniles charged had previously been adjudicated delinquent. Despite considerable and acrimonious debate, the bill failed to pass.

In its place, H.B. 1850 (subsequently Act 1980-12) was passed, amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania code. Title 42, Section 6355, continues to permit the juvenile courts to decide whether the offense should be prosecuted and transferred to criminal court. The criteria to be utilized in making this determination remain the same as previously cited, except "even though there may not have been a prior adjudication of delinquency" was added.

Act 1980-12 also provides that, after placement, a corrections institution must not only give the committing court written notice of any transfer to a less secure setting (as previously required), but must also provide the appropriate prosecutor with the same written notice. If the court or the prosecutor do not object to the request for transfer within ten days after receipt of the notice, the transfer may be effectuated. If the court or the prosecutor do object to the transfer, the court must hold a hearing within 20 days for the purpose of reviewing the commitment order. The institution must be notified of the scheduled hearing. Evidence may be presented at the hearing by any interested party on the issue of the propriety of the transfer. If the institution seeks to transfer to a more secure facility, the child must have a full hearing before the committing court. At the hearing, the court may reaffirm or modify its commitment order.

Act 1980-12 also provides law enforcement officers with authority to fingerprint or photograph, or both, any child 15 years of age or older who is alleged to have committed a delinquent act which constitutes a felony. Provision for destruction of these records is included, if the child is not adjudicated delinquent for reason of the alleged acts (Section 6308(c)).

Role of the Prosecutors

In general, district attorneys are not involved in the legal screening of complaints at the intake stage of the juvenile courts. In most cases, intake staff members (technically, probation officers) determine, without consultation with the district attorneys, whether complaints should be filed.

The role of the district attorneys in transfer hearings varies from one area of the state to another, depending upon the informal relationship of the prosecutor with the juvenile court judge and the probation department. At the time of this case study, information from juvenile court judges indicated that in slightly more than one-half of the counties, district attorneys assumed sole responsibility for initiating transfer hearings. In 40 percent of the counties, petitions for transfer hearings were presented by the juvenile probation officers, and in the remaining counties the petitions were presented jointly by the district attorneys and the probation officers.

The major responsibilities of the district attorneys in dealing with juvenile offenders are to prosecute youth (charged with murder) in the criminal courts and to bring juvenile offenders 14 to 18 years of age who are alleged to have committed felony-type acts to the attention of the juvenile courts through the filing of transfer petitions.

One option always available to the district attorneys is to terminate or dismiss a case that has been petitioned for transfer, prior to the actual transfer. The statistics from the district attorney's office in Philadelphia show that, in 1976, 25 percent of the requests for transfer were withdrawn by the district attorney's office prior to the transfer hearing. In 1978, 40 percent were withdrawn. Whether the filing of transfer motions is used as a plea bargaining tool is not known. Once transfer is accomplished, the conviction rate is reported to be very high.

Defender Services

The involvement of defense counsel during the preadjudication stage seems to be more consistent in the various courts than the involvement of prosecutors. During both informal and formal intake proceedings, juveniles are advised of their rights to counsel, a practice congruent with standards adopted by the Pennsylvania Juvenile Court Judges Commission. On a regular basis, juveniles are advised (and in some courts, required) to retain legal counsel at all stages of any proceedings, and counsel must be provided, unless waived. Public defenders are provided in jurisdictions where they are available; where not available, counsel is assigned from among members of the bar association.

Confinement Practices

Detention Practices

Adult defendants in Pennsylvania awaiting trial are detained in city or county jails, depending upon the local circumstances and various court jurisdictions. When youth are being held (having been charged with excluded offenses), or when youth under 18 are judicially waived, they will generally be treated as adults and detained in jails. However, waived youth may continue to be held in juvenile detention, awaiting trial in adult court, at the discretion of the transferring juvenile courts. Detention in adult jails and lockups is prohibited for juveniles charged with delinquency, dependency, or other juvenile statuses.

Juvenile detention in Pennsylvania is operated by individual counties, or by multicounty regions. The major cities and counties operate their own detention centers.

A child taken into custody shall not be detained or placed in shelter care prior to a hearing on the petition, unless his detention is required to protect the person or property of others or of the child, because the child may abscond or be removed from the jurisdiction of the court, or because he has no parent, guardian, or other person to provide supervision and care and return him to the court when required.

Sentencing Options

Individuals convicted in criminal courts may be placed on probation or sentenced to an institution operated by the Department of Justice, Bureau of Corrections. Those receiving maximum sentences of two to five years may be sent, at the discretion of the court, to a state corrections diagnostic and classification center for classification and transfer within the state system. Persons convicted and sentenced to five years or more must be sent to a state corrections diagnostic and classification center. As regional corrections facilities become available, counties within the region may be required to send all individuals receiving sentences of six months to five years to a state corrections facility, and those sentenced to over five years to a state corrections diagnostic and classification center. Minimum sentences cannot exceed one-half of the maximum length of sentence, at the discretion of the court.

Young offenders who received sentences of confinement in 1978, because of their ages, were generally assigned to the state-operated Camp Hill Correctional Institution.

Youth convicted in criminal courts cannot be sentenced to or administratively transferred to juvenile corrections facilities or to DPW's Bureau of Youth Services.

STATE DATA SUMMARY

As described in the Methodology section, data were collected in different ways in Pennsylvania, depending upon the type of information sought. Frequency data (Phase I) relating to judicial transfers were first obtained from a report prepared by the Pennsylvania Joint Council on the Criminal Justice System, Inc. Based on this report data, Phase II data were sought through telephone contact with the 15 counties which were either among the ten percent most populous in the state, were reported to have made five or more judicial transfers, in 1978, or had available information. Subsequent to this collection effort a second state source, the Juvenile Court Judges' Commission, supplied judicial transfer data which conflicted with the first state source. In addition, the 15 local sources were not consistent with either of the two state sources. Due to this variation in judicial transfer data, all three sources' information is provided in Tables 39-1A and 39-1B in order to allow the reader a fairer understanding of the phenomenon in this state.

Some small problems also occurred in determining the frequency of youth being tried in adult courts for excluded murder offenses, as described in the Methodology section. Slight variation occurred in the frequency (Phase I) data supplied by the Pennsylvania Commission on Crime and Delinquency and the subsequently collected Phase II data, reported directly by local sources in the counties reported to have made such arrests. This problem has therefore led to the display of both data sets in Tables 39-1A and 39-1B. However, it should be noted that the state-supplied excluded offense information consisted of arrests of juveniles for the crime of murder reported to the Pennsylvania State Police, while the local sources reported actual case filings.

No data were available for excluded summary offenses such as traffic, from any source in Pennsylvania.

Table 39-1A is a county breakdown of the number of youth eligible for prosecution in Pennsylvania adult courts through judicial transfer and arrests for murder, as obtained from state sources. In the 1978 calendar year, 212 youth were judicially transferred according to the Joint Council's report and 264 were reported judicially transferred in the Juvenile Court Judges' Commission data. The variation may be partially explained as resulting from the difference in counting individuals and counting cases.

Table 31-1A also reflects the number of arrests for murder, by county, of youth under 18 years of age who were subject to prosecution as adults due to the excluded offense provision. In 1978, 63 youth were arrested for this offense, according to the Pennsylvania Commission on Crime and Delinquency's report of state police records, for a state rate of 0.314 per 10,000 juveniles eight to 17 years of age.

TABLE 39-1A. PENNSYLVANIA: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE AND LEGAL MECHANISM) AS REPORTED BY STATE SOURCES

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver[b] I Cases[c]	Judicial Waiver[b] I Rate[d]	Judicial Waiver[b] II Cases	Judicial Waiver[b] II Rate[d]	Excluded Offenses Cases[e]	Excluded Offenses Rate[d]
Adams	11,544	2	1.733	3	2.599	0	0.000
Allegheny	243,949	18	0.738	9	0.369	5	0.205
Armstrong	13,169	1	0.759	3	2.278	2	1.519
Beaver	36,144	1	0.277	1	0.277	2	0.553
Bedford	8,239	0	0.000	1	1.214	2	2.427
Berks	49,442	2	0.405	2	0.405	1	0.202
Blair	22,833	3	1.314	3	1.314	0	0.000
Bradford	12,287	2	1.628	1	0.814	0	0.000
Bucks	89,612	1	0.116	4	0.446	3	0.335
Butler	25,654	6	2.339	12	4.678	0	0.000
Cambria	31,654	4	1.263	4	1.263	1	0.316
Cameron	1,291	0	0.000	0	0.000	0	0.000
Carbon	8,404	0	0.000	0	0.000	0	0.000
Centre	15,721	0	0.000	0	0.000	0	0.000
Chester	53,003	6	1.132	3	0.566	1	0.189
Clarion	6,860	2	2.915	0	0.000	1	1.458
Clearfield	14,453	3	2.076	3	2.076	0	0.000
Clinton	6,366	1	1.571	2	3.142	0	0.000
Columbia	9,450	0	0.000	0	0.000	3	3.175
Crawford	15,288	1	0.654	0	0.000	0	0.000

TABLE 39-1A (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver[b]				Excluded Offenses	
		I		II			
		Cases[c]	Rate[d]	Cases	Rate[d]	Cases[e]	Rate[d]
Cumberland	28,949	4	1.382	5	1.727	0	0.000
Dauphin	35,727	9	2.519	11	3.079	3	0.840
Delaware	99,089	10	1.009	15	1.514	2	0.202
Elk	7,678	0	0.000	0	0.000	0	0.000
Erie	51,042	6	1.176	4	0.784	1	0.196
Fayette	27,426	2	0.729	3	1.094	0	0.000
Forest	981	0	0.000	0	0.000	0	0.000
Franklin	19,248	3	1.559	4	2.078	0	0.000
Fulton	2,262	3	13.263	2	8.842	0	0.000
Greene	6,789	0	0.000	1	1.473	0	0.000
Huntingdon	6,858	0	0.000	0	0.000	0	0.000
Indiana	14,254	4	2.806	4	2.806	0	0.000
Jefferson	7,810	1	1.280	1	1.280	0	0.000
Juniata	3,244	0	0.000	0	0.000	0	0.000
Lackawanna	35,542	2	0.563	3	0.844	0	0.000
Lancaster	60,946	9	1.477	7	1.149	1	0.164
Lawrence	17,591	1	0.568	2	1.137	0	0.000
Lebanon	20,301	1	0.493	1	0.493	0	0.000
Lehigh	41,949	6	1.430	11	2.622	2	0.477
Luzerne	52,651	11	2.089	12	2.279	0	0.000
Lycoming	20,212	2	0.990	7	3.463	0	0.000
McKean	9,202	0	0.000	0	0.000	0	0.000
Mercer	21,936	4	1.823	2	0.912	0	0.000
Mifflin	8,466	1	1.181	0	0.000	0	0.000
Monroe	8,774	3	3.419	1	1.140	0	0.000

TABLE 39-1A (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver[b]				Excluded Offenses	
		I		II			
		Cases[c]	Rate[d]	Cases	Rate[d]	Cases[e]	Rate[d]
Montgomery	109,451	3	0.091	8	0.731	2	0.183
Montour	2,623	0	0.000	0	0.000	0	0.000
Northampton	36,794	11	2.990	12	3.261	0	0.000
Northumberland	16,465	3	1.822	4	2.429	0	0.000
Perry	5,619	0	0.000	0	0.000	0	0.000
Philadelphia	302,757	46	1.519	76	2.510	26	0.859
Pike	2,219	0	0.000	0	0.000	0	0.000
Potter	3,219	1	3.107	1	3.107	0	0.000
Schuylkill	25,179	1	0.397	4	1.589	0	0.000
Snyder	5,374	0	0.000	0	0.000	0	0.000
Somerset	13,195	3	2.274	2	1.516	0	0.000
Sullivan	1,062	0	0.000	0	0.000	0	0.000
Susquehanna	6,959	0	0.000	0	0.000	0	0.000
Tioga	7,813	2	2.560	2	2.560	0	0.000
Union	4,822	1	2.074	0	0.000	0	0.000
Venango	11,285	0	0.000	0	0.000	0	0.000
Warren	8,232	2	2.430	7	0.850	0	0.000
Washington	34,864	1	0.287	1	0.287	0	0.000
Wayne	5,740	1	1.742	0	0.000	0	0.000
Westmoreland	65,749	0	0.000	0	0.000	1	0.152

TABLE 39-1A (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver[b]				Excluded Offenses	
		I		II			
		Cases[c]	Rate[d]	Cases	Rate[d]	Cases[e]	Rate[d]
Wyoming	4,328	1	2.311	0	0.000	0	0.000
York	49,496	1	0.202	0	0.000	4	0.808
Total	2,007,535	212	1.056	264	1.315	63	0.314

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. The data source for Judicial Waiver I is the Pennsylvania Joint Council on Criminal Justice System, Inc., The Transfer of Juveniles to Adult Courts in Pennsylvania; Data Supplement, 1978 (Harrisburg, Penn.: December 1978). The Judicial Waiver II data source is the Pennsylvania Department of Justice, Juvenile Court Judges' Commission, Juvenile Statistics Division, Pennsylvania Juvenile Court Dispositions 1978 (Harrisburg, Penn.: 1978).

c. Data represents individuals, not cases filed.

d. Rate per 10,000 juveniles eight to 17 years old (1978).

e. Arrest data provided by the Pennsylvania Commission on Crime and Delinquency, based on Pennsylvania State Police data. This state source did not estimate the number of arrests which resulted in court referrals.

Table 39-1B displays data from the contacted local sources, regarding judicial transfer in 15 counties and excluded murder offenses in 19 counties. These data were obtained by Academy staff through telephone interviews with local officials. Judicial transfers of 146 youth were reported in the 15 Phase II counties, for a rate of 1.123 per 10,000 juveniles eight to 17 years of age in those counties. The 19 counties which had state-reported juvenile arrests for murder, reported 53 youth were filed against in adult courts--a total of ten less cases than reported arrests. Due to the period of time involved between arrests and the court filings, this difference may in part be the result of some youth being arrested in 1978 but not being referred to court until the following year. This variation may also reflect the result of plea bargaining, whereby youth charged with a lesser offense are referred to juvenile courts.

TABLE 39-1B. PENNSYLVANIA: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE AND LEGAL MECHANISM) AS REPORTED BY LOCAL SOURCES

County	Juvenile Population (Age 8-17)[a]	Judicial Waiver		Excluded Offenses	
		Cases	Rate[b]	Cases	Rate[b]
Allegheny	243,949	10	0.410	1	0.041
Armstrong	13,169	**	**	2	1.519
Beaver	36,144	**	**	2	0.553
Bedford	8,239	**	**	1	1.214
Berks	49,442	**	**	1	0.202
Bucks	89,612	4	0.446	3	0.335
Butler	25,654	6	2.339	**c	**
Cambria	31,654	1	0.316	1	0.316
Chester	53,003	5	0.943	1	0.189
Clarion	6,860	**	**	1	1.458
Columbia	9,450	**	**	3	3.175
Dauphin	35,727	13	3.639	2	0.560
Delaware	99,089	10	1.009	2	0.202
Erie	51,042	5	0.980	1	0.196
Lancaster	60,946	9	1.477	1	0.164
Lehigh	41,949	6	1.430	2	0.477
Luzerne	52,651	11	2.089	**c	**
Montgomery	109,451	9	0.822	2	0.183
Northampton	36,794	7	1.902	**c	**
Philadelphia	302,757	49	1.618	22	0.727
Westmoreland	65,749	1	0.152	1	0.152
York	49,496	**	**	4	0.808

TABLE 39-1B (Continued)

County	Juvenile Population (Age 8-17)[a]	Judicial Waiver		Excluded Offenses	
		Cases	Rate[b]	Cases	Rate[b]
Totals	1,472,827	146	1.123[b]	53	0.390[b]

** denotes Not Surveyed.

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978), in reporting counties.

c. No state source reported arrests of juveniles for murder.

Because of research done by other organizations in Pennsylvania, it is possible to offer some trend perspectives in relation to the 1978 data presented in Tables 39-1A and 39-1B. While juvenile arrests for Part I offenses (includes larceny, burglary, and auto theft) remained relatively constant during this period, juvenile arrests for murder and rape decreased dramatically, as can be seen in Table 39-2, comparing 1976, 1977, and 1978.

TABLE 39-2. PENNSYLVANIA: JUVENILE ARRESTS (BY YEAR AND TYPE OF OFFENSE IN 1976, 1977 AND 1978[a]

	Juvenile Arrests				
Year	Part I Offenses	Non-negligent Manslaughter	Rape	Robbery	Aggravated Assault
1976	40,574	105	321	2,531	2,067
1977	39,367	40	292	2,502	2,060
1978	40,157	63	244	2,762	2,128

a. Source: Memorandum to Honorable Anthony Scirica and Joseph Rhoses, Pennsylvania House of Representatives, from Ken Adami, Legislative Staff, Harrisburg, unpublished, April 10, 1979.

During the same period of time, judicial waivers declined as well, as shown in Table 39-3.

TABLE 39-3. PENNSYLVANIA: JUDICIAL WAIVERS TO ADULT COURTS IN 1976, 1977, AND 1978[a]

Year	Total Waivers	Philadelphia[b]	Allegheny County (Pittsburgh)	Rest of State
1976	337	78	19	240
1977	279	84	12	183
1978	212	46[c]	18	248

a. Source: Pennsylvania Joint Council on the Criminal Justice System, Inc., The Transfer of Juveniles to Adult Courts in Pennsylvania; Data Supplement, 1978 (Harrisburg, Penn.: December 1978).

b. The Court of Common Pleas of Philadelphia Family Court Division, 1978 Report reflects 1976, 1977, and 1978 judicial waivers as 59, 122, and 76, respectively.

c. The Philadelphia office of the District Attorney supplied Phase II data on 49 judicial waivers in 1978.

The following tables and figures, displaying data for both legal mechanisms, contain Phase II data gathered from local sources. The Phase II judicial waiver counties include 22 percent (15) of the state's 67 counties, but also represent 65 percent of the states' estimated juvenile population. In comparison, the Phase II excluded murder offense counties comprise 28 percent (19) of the state's counties and 68 percent of the estimated juvenile population. In addition, Phase II excluded offense data were collected from all counties reported by state sources to have arrested youth under 18 years of age for murder.

Judicial Waiver

This section contains a series of tables and a brief discussion pertaining to the Phase II information gathered from local sources about youth referred to adult courts during 1978 through the state's judicial transfer mechanism. The age, sex, and race breakdown of judicial transfers from local sources in Phase II counties is presented in Table 39-4. Of the 146 transfers, 82 percent (119) were 17 years old and older, and 96 percent (139) were males. Minority youth represented 61 percent (89) of the Phase II total. However, 54 percent of the minority youth were in one county. Excluding Philadelphia, minority youth represented 43 percent of juveniles judicially transferred in the Phase II counties.

TABLE 39-4. PENNSYLVANIA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978, AS REPORTED BY LOCAL SOURCES

County	Total Waivers	Age					Sex			Race		
		0-15	16	17	18+	Un-known	Male	Female	Un-known	White	Minor-ity	Un-known
Allegheny	10	0	2	6	2	0	10 est	0	0	2	8	0
Bucks	4	0	0	4	0	0	4	0	0	3	1	0
Butler	6	2 est	3 est	1 est	0	0	6	0	0	6	0	0
Cambria	1	0	0	1	0	0	1	0	0	1	0	0
Chester	5	0	1	3	1	0	5	0	0	3	2	0
Dauphin	13	2	4	7	0	0	13	0	0	2	11	0
Delaware	10	0	2	5	3	0	10	0	0	6	4	0
Erie	5	0	0	2	3	0	5	0	0	2	3	0
Lancaster	9	0	1	8	0	0	7	2	0	6	3	0
Lehigh	6	0	0	6	0	0	6	0	0	5	1	0
Luzerne	11	0	0	8	3	0	11	0	0	11	0	0
Montgomery	9	0	0	7	2	0	9	0	0	6	3	0
Northampton	7	0	1	6	0	0	7	0	0	2	5	0
Philadelphia	49	2	6	29	12	0	45 est	4 est	0	1	48	0
Westmoreland	1	*	*	*	*	1	*	*	1	*	*	1
State Phase II Total	146	6	20	93	26	1	139	6	1	56	89	1

* denotes Not Available.

Table 39-5 is a distribution of original offenses for youth judicially transferred in Phase II counties. Murder, as an excluded offense, is not included in this table. Personal offenses (manslaugher, rape, robbery, and other personal offenses) represented 62 percent (90) of the total number of known offenses. Property offenses accounted for 34 percent (50). The "other property" category included larceny, auto theft, trespassing, fraud, forgery, and receiving stolen property. Public order offenses included drug and liquor violations and represented three percent (five) of known offenses. See also Figure 39-1 for a graphic breakdown of cases by types of offenses by percentage, including the unknown offense.

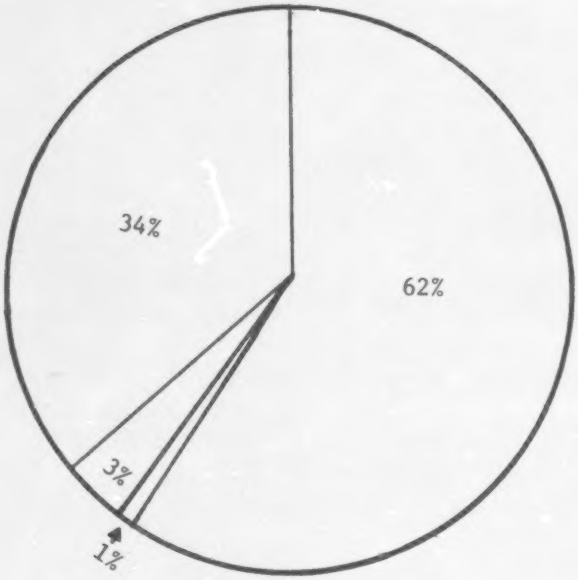
TABLE 39-5. PENNSYLVANIA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY TYPE OF OFFENSE) IN 1978, AS REPORTED BY LOCAL SOURCES

County	Total Waivers	Offenses[a]										
		Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General Offenses	Unknown
Allegheny	10	0	0	3	0	3	0	2	2	0	0	0
Bucks	4	0	0	1	0	1	0	1	1	0	0	0
Butler	6	0	0	2	0	1 est	0	2	1	0	0	0
Cambria	1	0	0	0	0	0	0	1	0	0	0	0
Chester	5	0	0	1	0	1	0	2	0	1	0	0
Dauphin	13	1	6	1	0	1	0	3	1	0	0	0
Delaware	10	0	0	3	1	1	0	4	1	0	0	0
Erie	5	0	1	1	0	2	0	0	0	1	0	0
Lancaster	9	0	0	0	0	4	0	5	0	0	0	0
Lehigh	6	0	0	0	0	1	0	2	2	1	0	0
Luzerne	11	0	1	2	0	0	0	8	0	0	0	0
Montgomery	9	2	0	3	0	2	0	2	0	0	0	0
Northampton	7	0	0	3	0	0	0	4	0	0	0	0
Philadelphia	49	5	9	18	0	8	1	4	2	2	0	0
Westmoreland	1	*	*	*	*	*	*	*	*	*	*	1
State Phase II Total	146	8	17	38	1	25	1	40	10	5	0	1

* denotes Not Available.

a. Only most serious offense per individual listed.

FIGURE 39-1. PENNSYLVANIA: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978, AS REPORTED BY LOCAL SOURCES



Offenses[a]

Personal	62%
Property	34%
Public Order	3%
Other General	0%
Unknown	1%

N= 146

---

a. Violent offenses (manslaughter, rape, robbery, and aggravated assault), represent 60 percent of all offenses in the Phase II counties.

Dispositions for judicially transferred youth are reflected in Table 39-6. Excluding unknown judgments and those in the "Other" category, ten percent were either found not guilty or dismissed in adult courts. Eighty-nine percent (118) were convicted, including six youth in one county (Butler) being convicted under the Young Adult Offender Statute (YAOS).

TABLE 39-6. PENNSYLVANIA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENT) IN 1978, AS REPORTED BY LOCAL SOURCES

County	Total Waivers	Judgments						
		Not Guilty	Dismissed	Referred to Juvenile Court	Youthful Offenders Judgments	Guilty	Other[a]	Unknown
Allegheny	10	0	1	1	0	7	1	0
Bucks	4	0	0	0	0	4	0	0
Butler	6	0	0	0	6	0	0	0
Cambria	1	0	0	0	0	1	0	0
Chester	5	0	0	0	0	2	3	0
Dauphin	13	0	3	0	0	9	1	0
Delaware	10	0	0	0	0	8	2	0
Erie	5	0	1	0	0	4	0	0
Lancaster	9	2	0	0	0	2	5	0
Lehigh	6	0	0	0	0	6	0	0
Luzerne	11	0	0	0	0	11	0	0
Montgomery	9	0	0	0	0	8	1	0
Northampton	7	0	0	0	0	7	0	0
Philadelphia	49	3	3	0	0	43	0	0
Westmoreland	1	*	*	*	*	*	*	1
State Phase II Total	146	5	8	1	6	112	13	1

* denotes Not Available.

a. Pending or held open.

The convictions in Table 39-6, represented in the columns marked "Youthful Offender Judgments" and "Guilty" were combined on Table 39-7, in order to reflect the sentencing dispositions pertinent to those cases. As can be seen on Table 39-7, 97 youth out of the total 118, or about 82 percent, were sentenced to places of confinement, i.e., local jails (26 percent) and state adult corrections facilities (56 percent). Twenty youth received probation and one youth, in Allegheny County, was sentenced to the Job Corps.

TABLE 39-7. PENNSYLVANIA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND BY SENTENCE TYPE) IN 1978, AS REPORTED BY LOCAL SOURCES

		Sentence Types					
County	Total Convictions	Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other
Allegheny	7	0	0	0	6	0	1
Bucks	4	0	1	3	0	0	0
Butler	6	0	0	0	6	0	0
Cambria	1	0	0	1	0	0	0
Chester	2	0	0	2	0	0	0
Dauphin	9	0	0	1	8	0	0
Delaware	8	0	5	3	0	0	0
Erie	4	0	0	1	3	0	0
Lancaster	2	0	0	1	1	0	0
Lehigh	6	0	1	4	1	0	0
Luzerne	11	0	6	4	1	0	0
Montgomery	8	0	2	3	3	0	0
Northampton	7	0	1	6	0	0	0
Philadelphia	43	0	4	2	37	0	0
State Phase II Total	118	0	20	31	66	0	1

The known Phase II cases of youth sentenced to confinement reported on Table 39-7 (97) were then combined in order to reflect the maximum terms possible under the adult court sentences. As Table 39-8 reflects more than one-half (56 percent) of these youth received maximum sentences of three years or less, when sentence was known. Two youth were sentenced to life imprisonment; none of these youth were sentenced to death. The eight youth sentenced to indeterminate periods of confinement could not be quantified, in terms of maximum sentences.

TABLE 39-8. PENNSYLVANIA: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND BY MAXIMUM SENTENCE) IN 1978 AS REPORTED BY LOCAL SOURCES

		Sentence Maximums								
County	Total Confinements	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Allegheny	6	0	2	0	3	0	1	0	0	0
Bucks	3	0	3	0	0	0	0	0	0	0
Butler	6	0	6	0	0	0	0	0	0	0
Cambria	1	1	0	0	0	0	0	0	0	0
Chester	2	1	1	0	0	0	0	0	0	0
Dauphin	9	1	1	0	1	0	6	0	0	0
Delaware	3	0	3	0	0	0	0	0	0	0
Erie	4	1	0	0	1	1	0	1	0	0
Lancaster	2	0	1	0	0	1	0	0	0	0
Lehigh	5	1	3	1	0	0	0	0	0	0
Luzerne	5	0	3	2	0	0	0	0	0	0
Montgomery	6	0	3	0	0	1	1	1	0	0
Northampton	6	0	0	6	0	0	0	0	0	0
Philadelphia	39	*	22	*	13 est	2 est	*	*	0	2
State Phase II Total	97	5	48	9	18	5	8	2	0	2

* denotes Not Available.

Excluded Offenses

This section contains a series of tables and discussion on Phase II data collected from local sources about the excluded offense of murder. Information is presented, to the extent available, for all 53 locally reported cases, broken down by the 19 counties which were identified as having arrests for murder of youth under 18 years of age in 1978.

Table 39-9 reflects the age, sex, and race data pertaining to youth charged with murder. Almost all the cases involved males and about one-half of them were white. Unlike judicial waivers, over 58 percent of these criminal defendants were under the age of 17.

TABLE 39-9. PENNSYLVANIA: EXCLUDED OFFENSES IN PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978, AS REPORTED BY LOCAL SOURCES

County	Total Referrals	Age				Sex		Race	
		0-15	16	17	18+	Male	Female	White	Minority
Allegheny	1	1	0	0	0	1	0	0	0
Armstrong	2	2	0	0	0	2	0	2	0
Beaver	2	1	1	0	0	2	0	1	1
Bedford	1	0	0	1	0	1	0	1	0
Berks	1	0	1	0	0	1	0	1	0
Bucks	3	1	0	2	0	3	0	2	1
Cambria	1	0	0	1	0	1	0	1	0
Chester	1	0	1	0	0	0	1	1	0
Clarion	1	0	0	1	0	1	0	1	0
Columbia	3	0	0	3	0	3	0	3	0
Dauphin	2	0	0	2	0	2	0	0	2
Delaware	2	1	0	1	0	2	0	0	2
Erie	1	0	1	0	0	1	0	0	1
Lancaster	1	0	1	0	0	1	0	1	0
Lehigh	2	0	1	1	0	2	0	2	0
Montgomery	2	0	0	2	0	2	0	2	0
Philadelphia	22	6	9	7	0	21	1	3	19
Westmoreland	1	1	0	0	0	1	0	1	0
York	4	3	0	0	1	3	1	3	1
State Phase II Total	53	16	15	21	1	50	3	26	27

Table 39-10 represents the judgments received by youth charged with murder. Excluding the seven cases in the "Other" category, 63 percent were found guilty and 26 percent were referred to the juvenile courts. Only five cases were either dismissed or found not guilty.

TABLE 39-10. PENNSYLVANIA: EXCLUDED OFFENSES IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS) IN 1978, AS REPORTED BY LOCAL SOURCES

		Judgments					
County	Total Referrals	Not Guilty	Dismissed	Referred to Juvenile Court	Youthful Offender Judgments	Guilty	Other
Allegheny	1	0	0	1	0	0	0
Armstrong	2	0	0	2	0	0	0
Beaver	2	0	0	1	0	1	0
Bedford	1	0	0	0	0	1	0
Berks	1	0	0	0	0	1	0
Bucks	3	0	0	1	0	0	2
Cambria	1	0	0	0	0	1	0
Chester	1	0	0	0	0	1	0
Clarion	1	0	0	0	0	1	0
Columbia	3	0	0	0	0	3	0
Dauphin	2	0	0	0	0	2	0
Delaware	2	0	0	0	0	1	1
Erie	1	0	0	0	0	1	0
Lancaster	1	0	0	0	0	0	1
Lehigh	2	0	0	0	0	2	0
Montgomery	2	0	0	0	0	2	0
Philadelphia	22	0	2	5	0	12	3
Westmoreland	1	0	0	1	0	0	0
York	4	2	1	1	0	0	0
State Phase II Total	53	2	3	12	0	29	7

The 29 Phase II cases in which youth were found guilty resulted in several different kinds of sentences. Table 39-11 reflects the outcomes. Seventy-two percent (18) of the convicted youth, where sentences were known, were sentenced to adult corrections facilities. Two youth were given probation. Among the five cases in the "Other" category, one youth was sentenced to a private treatment facility.

TABLE 39-11. PENNSYLVANIA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM EXCLUDED OFFENSES IN PHASE II COUNTIES (BY COUNTY AND BY SENTENCE TYPE) IN 1978, AS REPORTED BY LOCAL SOURCES

County	Total Convictions	Sentence Types						
		Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other[a]	Unknown
Beaver	1	0	0	0	1	0	0	0
Bedford	1	0	1	0	0	0	0	0
Berks	1	0	0	0	1	0	0	0
Cambria	1	0	0	0	0	0	1	0
Chester	1	0	0	0	1	0	0	0
Clarion	1	0	0	0	0	0	1	0
Columbia	3	0	0	0	3	0	0	0
Dauphin	2	0	0	0	1	0	1	0
Delaware	1	0	0	0	1	0	0	0
Erie	1	0	0	0	1	0	0	0
Lehigh	2	0	0	0	0	0	2	0
Montgomery	2	0	0	0	2	0	0	0
Philadelphia	12	*	1	*	7	*	*	4
State Phase II Total	29	0	2	0	18	0	5	4

* denotes Not Available.

a. Three cases were awaiting sentencing, one case was under appeal and one case was sentenced to a private treatment facility.

Table 39-12 reflects the maximum sentence lengths given to those 18 youth sent to state corrections facilities in Phase II counties. No youth received maximum sentences of one year or less, over three to five years, or death. Sentences were relatively long. Eight out of 18 cases (44 percent) received sentences of over ten years, five youth received life sentences and the outcome of the Beaver County conviction is unknown.

TABLE 39-12. PENNSYLVANIA: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM EXCLUDED OFFENSES IN PHASE II COUNTIES (BY COUNTY AND BY MAXIMUM SENTENCE) IN 1978, AS REPORTED BY LOCAL SOURCES

		Sentence Maximums								
County	Total Confinements	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Beaver	1	*	*	*	*	*	*	*	*	1
Berks	1	0	0	0	0	1	0	0	0	0
Chester	1	0	0	0	0	1	0	0	0	0
Columbia	3	0	0	0	0	3	0	0	0	0
Dauphin	1	0	0	0	0	0	1	0	0	0
Delaware	1	0	1	0	0	0	0	0	0	0
Erie	1	0	0	0	0	0	0	1	0	0
Montgomery	2	0	0	0	0	1	0	1	0	0
Philadelphia	7	0	1	0	1	2	0	3	0	0
State Phase II Total	18	0	2	0	1	8	1	5	0	1

* denotes Not Available.

By way of summary, Table 39-12 is presented to assist the reader in better understanding the falloff in the frequencies listed in the preceding tables, as reported by local Phase II sources only.

TABLE 39-13. PENNSYLVANIA: SUMMARY OF TABLES (BY LEGAL MECHANISM) AS REPORTED BY LOCAL SOURCES

	Judicial Waivers	Excluded Offenses
Total Referrals to Adult Courts in 1978	*a	*b
Total Referrals Selected for Phase II (Tables 39-4 and 39-9)	146	53
Total Referrals Resulting in Convictions (Tables 39-7 and 39-11)	118	29
Total Convictions Resulting in Sentences of Confinement (Tables 39-8 and 39-12)	97	18

* denotes Not Available.

a. The Joint Council on the Criminal Justice System, Inc. reported 212 judicial transfers occurred in 1978 and the Juvenile Court Judges' Commission reported 264 transfers occurred during that year.

b. The Pennsylvania Commission on Crime and Delinquency reported that Pennsylvania State Police records showed 63 arrests of youth 18 years of age for murder in 1978.

In summary, youth judicially transferred in Pennsylvania Phase II counties were generally at least 16 years old and male. Minorities represented over one-half of the Phase II totals; however, over one-half of these minority youth were transferred to adult courts in Philadelphia County. Most charges in Phase II counties (62 percent) were for personal offenses. Most youth (89 percent) were convicted in these counties and 82 percent were incarcerated upon conviction. The majority sentenced to incarceration in Phase II counties were sent to state adult corrections facilities. More than one-half (56 percent) of youth reported to be sentenced to confinement received maximum sentences of three years or less. Two youth received life sentences in the Phase II counties, however.

Fifty-eight percent of the youth in Pennsylvania Phase II counties' adult courts due to murder, excluded from juvenile court jurisdiction, were less than 17 years old and all but three of youth reported were males. The number of white and minority youth were almost evenly divided. Eighty-five percent of the cases in Phase II counties found guilty were sentenced to state adult corrections facilities. Thirteen of the 18 youth sentenced to confinement were given over ten-year sentences, with five youth receiving life sentences.

Data on excluded summary offenses including traffic were not available from any Pennsylvania source.

RESULTS OF ON-SITE INTERVIEWS

In February 1980, Academy staff visited Pennsylvania to conduct on-site interviews with key people in Allegheny, Dauphin, Greene, and Philadelphia Counties as well as in the state capital, Harrisburg. Interviews were arranged with judges and court personnel, prosecutors and public defenders, state and local officials, and youth advocacy and research agency personnel.

A standard interview format was used, in which interviewees were asked their opinions about the relative impacts of judicial transfers and excluded murder and summary offense cases on the system, the public, and the juveniles themselves. Other questions probed the deficiencies in the current system and proposals for change.

Perceived Effects on the Court System of Trying Youth as Adults

The effect of trying youth as adults most frequently mentioned with approval was the removal of the tougher cases from juvenile court jurisdiction. The opinion expressed was that the youth who were going to adult courts were the ones who were least likely to be amenable to effective treatment as juveniles. In 1977 and in 1978, this group represented less than one percent of the juvenile court workload. Nevertheless, they are the most problematic cases, in the minds of the interviewees.

The advantages to having the judicial transfer option were phrased in several ways:

- Fewer cases in juvenile courts.
- Saves time and money.
- Provides the court with an additional option;

- Provides a "release valve" for juvenile court.

- Demonstrates to the state the need for secure juvenile facilities. The argument here is that many more youth were waived (and ultimately sentenced to longer terms) than were necessary because the state fails to provide sufficient bedspace for juveniles.

Interviewees seemed to be sensing a number of effects simultaneously, relating to cost-benefit, institutional survival and public image. The removal of some youth not amenable to treatment as juveniles, according to one judge interviewed, "helps to keep intact the philosophy of the juvenile court as an instrument of treatment, rather than punishment."

Several respondents indicated that the juvenile courts felt no benefits from transferring youth to adult courts. Most respondents stated, at the same time, that there were no disadvantages to juvenile courts as a result of transferring youth to adult courts. Despite the prevailing opinion, there were some respondents who mentioned several disadvantages:

- Juvenile courts lose control of a greater number of youth, thereby decreasing their power.

- Parents are frequently inadequately prepared to cope with the adversarial process of the criminal court.

- For juvenile court judges, who typically operate from a treatment philosophy rather than one of retribution, it is distracting to single out certain juveniles for punishment.

No advantages for the adult courts were cited by any respondents. In fact, several respondents indicated that there were no disadvantages either, indicating that some interviewees felt that the transfer of youth into the adult system virtually had no effect on adult courts. Considering the relatively small number who are actually transferred, this represents an understandable response.

Other respondents mentioned a rather lengthy list of disadvantages to the adult courts, including:

- Increased caseload;

- Limited judicial experience with properly sentencing youth;

- Limited rehabilitative services in the adult system;

- Increased possibility of acquittal or probation;

- Increased costs through the double (juvenile/criminal court) hearing provisions; and

- It presents the courts with problems for which it has inadequate options.

Perceived Effects on the Corrections System of Trying Youth As Adults

All respondents indicated that the state adult corrections system did not benefit in any way from the placement of juveniles in the adult system. In fact, many disadvantages were itemized. The three most frequent responses were the problems of segregating youth from adults, overcrowding, and the increased potential for physical and sexual abuse. Several other disadvantages were also mentioned.

- It presents discipline problems and involves considerable staff training;
- It places more pressure on the adult system to provide space for youth, on a segregated or quasi-segregated basis; and
- It produces a need for more and different services.

Conversely, the juvenile corrections system was seen to derive several benefits. The benefit most frequently mentioned was that it removes the influence of hardened youth from affecting other juveniles. The perception is that since many serious offenders are removed, this also allows more concentration of efforts and resources upon those youth who are more likely to benefit.

The savings to juvenile correctional institutions could be substantial. Year-end population for all adult correctional facilities in the state, as of December 31, 1977, was reported at 7,600 by the Pennsylvania Bureau of Corrections. The population has continued to increase to 8,181. In 1978, 84 youth were sentenced to state adult facilities. While not enormous, the number of sentenced young offenders is significant.

Several respondents indicated that the result of transfer had no effect on juvenile corrections, since the alternatives are the same regardless of the court. With the development of small, secure treatment programs within the juvenile system, this statement obviously can be questioned.

Two disadvantages to juvenile corrections were mentioned, regarding the absence of transferred youth from that system:

- Decreased population could result in decreased appropriations.
- Waiver is a public acknowledgment by the courts of the failure of the juvenile correctional system.

Perceived Effects on Offenders of Being Tried As Adults

Many respondents indicated that if youth were tried as adults, their chances to "win" were increased. One respondent said, "Fifth percent of those youth transferred do no time at all."

The Academy census data does not support this contention. Of the 146 youth judicially transferred to criminal courts in 1978 from Phase II counties, 89 percent were convicted and 82 percent of those convicted were incarcerated in adult corrections institutions or jails. The percentage of youth convicted for murder in Phase II counties and sentenced to adult correctional facilities was 72 percent in 1978. Juvenile court dispositions for 1978 show that 7.5 percent of the total cases processed in juvenile courts were committed to public and private delinquency institutions. However, the periods of possible confinement are not nearly so long, normally under a year. Probation was the disposition in 18 percent of the cases.[32] These figures tend to substantiate the claim that youth transferred to adult courts, if convicted, are given more severe sentences than they would have received in juvenile courts.

The most frequently mentioned advantages to youth tried as adults related to the availability of legal safeguards, such as increased due process, use of jury trial, guaranteed legal representation and availability of bail/bond. Also mentioned were the more frequent use of fines and probation in lieu of commitment to state correctional institutions. (The data doesn't support this statement for many youth.)

Quite a few disadvantages to the youth were mentioned. The lack of rehabilitation services for youth in the adult system was mentioned most often. Other disadvantages frequently mentioned included:

- Threat of physical and sexual abuse in adult institutions;
- Association with hardened criminals;
- Permanent criminal record;
- Negative effects of probable segregation and possible isolation in adult institutions;
- The increased trial time involved in adult courts. (The average processing time for most cases in the juvenile court system was 88.1 days versus 171 days in adult court, according to the Pennsylvania Joint Council on the Criminal Justice System, using 1975 data. By 1978, the time lapse from referral to disposition for the average case in the juvenile court system was down to 67.44 days for all cases;[33]

- The negative effect of jail time, often referred to as "dead time;" and

- The lack of treatment and rehabilitation services.

Overall, youth were perceived as being better off in adult courts during the trail phase but worse off if incarceration in adult corrections institutions were ordered.

Perceived Effects on the Public of Trying Youth As Adults

The public safety issue was a key argument for the "Rendell amendments" (provisions to ease the deferral of youth to adult courts) to the juvenile justice code in Pennsylvania. It was generally believed by most respondents that the public would feel safer if serious juvenile offenders were tried in adult courts. While many respondents believed that there would be no actual effect on public safety, the consensus was that it would appear that something was being done about juveniles who committed violent crimes.

Information available in Pennsylvania tends to bear out public perceptions. About one-third of the juveniles referred to juvenile courts for violent offenses are detained prior to trial. Probation was ordered in about 26 percent of those cases (40 percent in Philadelphia). About 30 percent of the cases (46 percent in Philadelphia) were dismissed, warned, adjusted or held open.[34] It does appear that the adult system is harsher than the juvenile system, when measured in terms of convictions and confinements.

Several respondents stated that it might be less expensive to incarcerate a juvenile in adult facilities, rather than juvenile institutions. However, there may be social costs to consider. While the immediate effect of long-term incapacitation would remove serious juvenile offenders from the community, the ultimate outcome is believed by some to be negative, resulting in greater recidivism and profound negative effects on the juvenile, thereby producing higher crime rates.

Perceptions of Factors to be Considered in the Referral of Youth to Adult Courts

Respondents were surveyed for their opinions on which factors were the most important in considering the decision to try youths in adult courts. By far, the two criteria most frequently mentioned were the severity of the instant offense and the extent of the youth's prior record. Age was a distant third choice. These choices appear to be consistent with people's understanding of the current legal system in Pennsylvania. For example, murder is an adult offense, regardless of age.

Beyond these three criteria, about a third of the respondents mentioned some or all of the remaining factors that were enunciated in the Kent case. These include, in descending ranked order, criminal sophistication, lack of available services or potential for rehabilitation, best interests of the public or the child, dangerousness, and the use of social histories, probation reports and/or psychiatric evaluations.

The inference drawn from the low priority given to probation and psychiatric reports is that the overriding concern in making a transfer determination is clearly not therapeutic, but offense and offender-oriented. Excluding this difference, the factors cited by respondents closely match those defined by statute.

Perceptions of Needed Changes in the Referral of Youth to Adult Courts

Knowledgeable people in Pennsylvania are clearly divided into two opposing camps: (1) those who believe that the juvenile justice system is inadequate and has a history of leniency which contributes to serious juvenile crime, and (2) those who believe that the juvenile justice system, with all of its inadequacies, is far superior to the criminal justice system in deterring criminality. This dichotomy is readily apparent in legislative proposals which were introduced to reform the juvenile justice system.

At one extreme are bills, introduced by law enforcement personnel and prosecutors, calling for more excluded offenses, lower age for criminal prosecution, certification of first offenders, use of fingerprinting and photographs for retail thefts and other offenses, more discretion by the district attorneys in the juvenile court process, and a mandated number of beds in secure facilities for juveniles.

Opposition from child advocacy groups and public defenders recognizes many weaknesses in the current system, but call for a more humane juvenile justice system with "beefed up" services, rather than increasing the use of the criminal courts for juvenile offenders.

Somewhere in the middle are juvenile court personnel who maintain that the juvenile courts are the place for most delinquents, but cite a need for more options to be available to them. Specifically suggested was a long-term secure juvenile institutional care, which might obviate the transfer of many juveniles. Also suggested was mandatory education for detained juveniles, more rigorous detention standards, more community-based programs, more funds for diversion, more restitution programs, and provision for more time and personnel to deal with youth in juvenile courts.

Opinion was fairly evenly divided on how much influence the wishes of a youth should have upon the decision to be tried as an adult. Currently, a juvenile may request transfer. Five respondents stated that a youth's request should control the decision; six said that it should be given considerable weight; eight felt that it should be given some weight; and three said that it should not be considered at all.

The current struggle over changes in the juvenile code in the state remains a classic confrontation between "law and order" advocates and "child care" advocates. The changes to date have been compromised to accommodate both positions, leaving neither group with all it has sought. Specific language has been added to the juvenile code to allow transfer to adult courts for first offenders and to permit fingerprinting and photographing in certain types of cases. The "shopping list" of excluded offenses (which mandate transfer from juvenile courts) was not adopted, leaving the jurisdiction of the juvenile courts intact.

SUMMARY AND CONCLUSIONS

The issue of transfer of juveniles from juvenile courts to criminal courts was the major juvenile justice issue in the state at the time of the study. Judicial transfer as a means to address serious juvenile crime has engendered major controversy between "law and order" exponents and "child care" advocates, resulting in polarized and highly publicized positions. Open discussion in the legislature and the press has generated great public interest in this issue.

The focus of this controversy is the pressure of change being proposed by prosecutors. In a document in support of proposed amendments to the juvenile act, Philadelphia District Attorney Rendell stated:

> Despite a leveling off nationally, Philadelphia is experiencing a steadily upward spiral in juvenile crime. This is especially alarming in light of the decreasing population of children of juvenile court age within the city. In 1977, the Philadelphia Juvenile Court issued approximately 8,750 delinquent petitions alleging conduct that would constitute misdemeanors or felonies if committed by adults. In 1978, the number of petitions increased to over 10,150 (or an increase of 16 percent). In the first four months of 1979, the number of petitions filed by the court has increased by over 600, as compared to the same period of 1978.
>
> The District Attorney's Office believes that the rapid growth of serious delinquent conduct by juveniles in Philadelphia is creating a momentum within the community which will eventually result in significant change in our laws governing the handling of serious juvenile offenders.

> By taking action at this time, we hope to avert the type of overreaction which was displayed recently by the State of New York. In New York, the state legislature adopted amendments to the Juvenile Code dropping the age of a juvenile from 18 to 16 for most classifications of offenses and even down to 14 for several serious offenses.[35]

The opposing position can be illustrated by an excerpt from a letter written by Patricia J. Evey, Western Region Director of the Juvenile Justice Center, to the editor of the Pittsburgh Post-Gazette:

> Mr. Rendell's attempts to amend the Juvenile Act have brought him notoriety across the commonwealth. They seem to be based upon his perception that juvenile offenders are not handled punitively enough in the juvenile system and therefore the streets will be "safer" if juveniles can be expeditiously transferred to the adult system. This presumption ignores several important facts:
>
> - Under present juvenile law, an alleged offender awaiting hearing in juvenile court is detained without bail in a secure juvenile detention facility. If that same juvenile is transferred as an adult, he becomes eligible for bail and sometimes spends as long as six months on the street awaiting trial.
>
> - The adult prison system in Pennsylvania is packed. An increase of transfers of juveniles to adult court would necessitate massive and costly construction.
>
> - In adult prison, a juvenile gets no rehabilitation or education, is subject to the horrors of the environment, and comes out without job skills.
>
> - The present juvenile act adequately addresses the process of transferring those few serious juvenile offenders who are not amenable to treatment, care, and rehabilitation in the juvenile system to the adult system.[36]

The passage of HB. 1850, an attempt at compromise, has only temporarily reduced the furor surrounding the issue of youth being tried as adults. The importance of this issue in future public policy deliberations in Pennsylvania cannot be underestimated. The outcome of the controversy will seriously influence the entire justice system, both juvenile and adult, for many years to come.

FOOTNOTES

1. Act of 1903, Penn. Laws 274, No. 205, Section 1.
2. Act of 1923, Penn. Laws 898, No. 345, Section 11.
3. Act of 1933, Penn. Laws 1433, No. 311, Section 1.
4. Ibid, Section 18.
5. Ibid, Sections 1,2,4 and 14.
6. Act of 1939, Penn. Laws 394, No. 226, Section 1.
7. Act of 1972, Penn. Laws 1464, No. 333, Section 2.
8. Ibid, Sections 2,3,6 and 7.
9. Act of 1976, Penn. Laws 5, No. 142, Section 6302, Clauses 1 and 2.
10. Penn. Cons. Stat. Ann., Title 42, Section 6302, Clauses 1 and 2 (1978).
11. *In re Gaskins*, 244 A.2d 662 (1968).
12. *Commonwealth* v. *Moore*, 270 A.2d 200 (1970); *Commonwealth* v. *Schmidt*, 299 A.2d 254 (1973).
13. *Commonwealth* v. *Owens*, 254 A.2d 639 (1969); *Commonwealth* v. *Croft*, 285 A.2d 118 (1971).
14. *Commonwealth ex rel. Riggins* v. *Superintendent of Philadelphia Prisons*, 263 A2.d 754 (1970); *Schmidt*, supra: *Commonwealth* v. *Rice*, 318 A.2d 705 (1974).
15. *Commonwealth* v. *James*, 269 A.2d 898 (1970); *Kent* v. *United States*, 383 U.S. 541, 86 S. Ct. 1045 (1966).
16. *Commonwealth* v. *Nole*, 292 A.2d 331 (1972).
17. *U.S. ex rel. Walter* v. *Maroney*, 444 F.2d 47 (1971).
18. *In re Holmes*, 109 A.2d 523 (1954).
19. *Commonwealth* v. *Ransom*, 288 A.2d 762 (1972).
20. *Commonwealth* v. *Frisby*, 301 A.2d 610 (1973).
21. *Commonwealth* v. *Crowson*, 321 A.2d 643 (1974).
22. *Commonwealth* v. *Keefer*, 367 A.2d 1082 (1976); *Commonwealth* v. *Epps*, 383 A.2d 919 (1978).
23. *Commonwealth* v. *Pyle*, 342 A.2d 101 (1975); *Kent*, supra; *Commonwealth* v. *Batty*, 393 A.2d 435 (1978).
24. *Commonwealth* v. *Griener*, 388 A.2d 698 (1978); *Pyle*, supra.
25. Pennsylvania Joint Council on the Criminal Justice System, Inc., *The Secure Care and Treatment Needs of Male Youthful Offenders in Pennsylvania* (Harrisburg, Penn.: 1980).
26. Penn. Cons. Stat. Ann., Title 42, Section 6302, (1978).
27. Ibid, Section 6355, (1978).
28. Ibid, Section 6355(a), 6355(c) (1978).
29. Ibid, Section 6302, (1978).
30. Ibid, Section 6322, (1978).
31. Ibid, Section 6302, "Delinquent Act," Subsection (2)(ii), (1978).
32. Pennsylvania Department of Justice, Juvenile Court Judges' Commission, *Pennsylvania Juvenile Court Dispositions, 1977 and 1978* (Harrisburg, Penn.: 1980).
33. Pennsylvania Joint Council on the Criminal Justice System, Inc., *The Transfer of Juveniles to Adult Court, Pennsylvania, 1974-1977* (Harrisburg, Penn.: 1979).
34. Pennsylvania Joint Council on the Criminal Justice System, Inc., *Who Are Pennsylvania's Violent Juvenile Offenders?* (Harrisburg, Penn.: 1980).
35. Rendell, William, Statement delivered before the Pennsylvania Commission on Sentencing, Philadelphia, Pennsylvania, September, 1979.
36. "Changing the Way We Handle Juvenile Crime," *Pittsburgh Post-Gazette*, December 14, 1979.

RHODE ISLAND PROFILE

ACKNOWLEDGMENTS

The Academy expresses its appreciation to William A. Melone, Principal Management Analyst, Office of the Court Administrator; Joseph Butler, Deputy Court Administrator; and to the juvenile court personnel in Rhode Island for providing the necessary data. Gratitude is also extended to C. Leonard O'Brien, Office of the Court Administrator, and Nancy Baronian, Research Assistant, Legislative Council, for reviewing portions of the Rhode Island profile. In addition, appreciation is owed to the many other state and local officials who provided additional information.

METHODOLOGY

The Rhode Island Supreme Court was able to provide state data for 1978 judicial waivers for the statewide court system. However, breakdowns by county were unavailable from this state source. The Academy did not attempt to verify this aggregated data with individual court sources, because there is a state operated system. Data on youth excluded from juvenile court jurisdiction due to a third serious offense charge were not available from the juvenile court clerk in the supreme court, who stated the sought data were not compiled in Rhode Island. Finally, excluded traffic offense data were also provided by the supreme court in aggregated form.

COURT ORGANIZATION

The highest courts of general jurisdiction in Rhode Island are the superior courts. These courts operate in four locations and have original jurisdiction over all crimes.[1]

The seven district courts in Rhode Island have original jurisdiction over all misdemeanors where the right to a jury trial in the first instance has been waived. Minor criminal cases may also be heard in two municipal courts, local courts of limited jurisdiction, located in Providence and Pawtuckett. These courts also exercise jurisdiction over violations of municipal ordinances, including traffic.

The family courts of Rhode Island, a unified state court operating in four locations, have exclusive original jurisdiction over matters relating to juvenile delinquency, dependency, and neglect.[2] These family courts will hereafter be referred to as juvenile courts. Juveniles of any age charged with the violation of a traffic ordinance are tried as adults in the court of appropriate jurisdiction.

An overview of Rhode Islands courts by their jurisdiction over juveniles appears below.

RHODE ISLAND: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic
Family Courts	Superior Courts	District Courts Municipal Courts

TRANSFER PROCESS

In Rhode Island, the initial age of juvenile court jurisdiciton extends to 18 years of age.[3] Individuals who are 16 or 17 years old are eligible for prosecution in adult courts through two legal mechanisms.

Judicial Waiver

In Rhode Island, juveniles, 16 years or age or older, charged with an offense that would subject an adult to indictment may be judicially waived.[4] Juvenile jurisdiction may be waived only after a full investigation by judges of the juvenile courts. The courts must include a statement of the relevant facts as well as the reasons for or considerations motivating the determination, as mandated in Kent v. United States.[5] (see Case Law Summary section). Rhode Island statute does not specify who can initiate the waiver procedure. In addition, in the event that the juvenile court has waived jurisdiction over any individual, the waiver is permanent. All court proceedings subsequent to the permanent waiver must take place in adult courts.[6]

Excluded Offenses

Juveniles 16 years of age or older who are found delinquent on two separate occasions for having committed offenses after reaching age 16 which are subject to indictment if committed by adults are excluded from juvenile court jurisdiction for any subsequent felony offenses and are, therefore, automatically referred to adult courts for prosecution.[7] No juvenile court hearing is required in these cases.

All traffic offenses are excluded from juvenile court jurisdiction in Rhode Island as well. Youth charged with traffic violations are routinely handled in adult courts.[8]

CASE LAW SUMMARY

Relevant cases reaching the Rhode Island Supreme Court since 1950 have been primarily concerned with due process safeguards, including the right to legal representation. The supreme court held, in Knott v. Langlois, that the opportunity for a hearing, access by the juvenile's counsel to social service records, and a statement of reasons in support of the waiver order are implicit in the statutorily required full investigation prior to a waiver of juvenile court jurisdiction.[9] The court, in this manner, incorporated the mandate of Kent v. United States into the laws of Rhode Island.[10] The constitutionality of Rhode Island's waiver statute was addressed in In re Correia, wherein the court held that due process and equal protection standards were met by the statute in question.[11] Further, the court stated that a reviewing court should apply the procedural guidelines set forth in Knott v. Langlois.

The supreme court also held, in In re Holley, that the postindictment right to counsel at a lineup applies to preindictment lineups involving juvenile defendants.[12]

CORRECTIONS INFORMATION

In 1978, all adult and juvenile facilities as well as probation and parole services were under the jurisdiction of the Department of Corrections. Courts could commit adult offenders to the department for both felonies and misdemeanors.

Juveniles adjudicated delinquent in 1978 could be placed in juvenile corrections facilities operated by the Department of Corrections. As of January 1, 1980 all juvenile services and institutions came under the jurisdiction of the Division of Institutional Services, Department for Children and Their Families.

Youth tried as adults were treated as adults and were, therefore, subject to sentencing to adult corrections facilities.

Prior to 1980, there were no statutory provisions for administrative transfers between adult and juvenile facilities. However, effective January 1, 1980, according to state sources, juveniles adjudicated delinquent can be administratively transferred from juvenile facilities to adult facilities and programs.[13] Further, youth under 18 years of age convicted in adult courts can be transferred from adult facilities to juvenile facilities and programs.

STATE DATA SUMMARY

In Rhode Island, juvenile court jurisdiction extends to 18 years of age. Youth may be referred to the adult courts in several ways. First, youth may be judicially waived from juvenile courts, if they are 16 years of age or older and have committed an indictable offense, after investigation and hearing in juvenile courts. Second, Rhode Island also has a "once waived, always waived" provision. Third, individuals 16 years of age or older who have been found delinquent for two indictable offenses after the age of 16 are prosecuted for all subsequent felonies in adult courts. Data on this type of excluded offense were not collected in Rhode Island. Finally, excluded traffic offenses committed by persons under 18 years of age are routinely heard in adult courts. These traffic data are displayed in a separate section of this profile. Data displays by county were not available in Rhode Island. A state total representing all five Rhode Island counties is shown in the following tables.

Table 40-1 shows that eight youth were judicially waived to adult courts in Rhode Island in 1978, which represented a waiver rate of 0.509 per 10,000 juvenile population. In addition, it was reported that two other youth under 18 years of age were automatically tried in adult courts in 1978, having been judicially waived for previous offenses. These two youth are not included in the folowing judicial waiver tables.

TABLE 40-1. RHODE ISLAND: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY RATE AND LEGAL MECHANISM)

	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases[b]	Rate[c]
Rhode Island Total	157,073	8	0.509

a. 1978 population estimates were developed by the Natonal Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Two cases initially prosecuted in adult court because of a "once waived, always waived" provision not included in totals.

c. Rate per 10,000 juveniles eight to 17 years old (1978).

d. Breakdown by county was not available.

Table 40-2 gives a demographic breakdown of the eight youth judicially waived to adult courts in 1978. All were 17 years old and all were males. Fifty percent were white and 50 percent minority youth.

TABLE 40-2. RHODE ISLAND: JUDICIAL WAIVERS TO ADULT COURTS (BY AGE, SEX, AND RACE) IN 1978

		Age			Sex		Race	
	Total Waivers	16	17	18+	Male	Female	White	Minority
Rhode Island Total[a]	8	0	8	0	8	0	4	4

a. Breakdown by county was not available.

Table 40-3 shows the distribution of judicial waivers by offense category. Three offenses, or 43 percent of the known cases, were for personal offenses (murder, manslaughter, aggravated assault, or other personal offenses). Four offenses, or 57 percent, were for burglary or other property offenses. Figure 40-1 graphically illustrates these categories by percentage, including the one unknown offense.

TABLE 40-3. RHODE ISLAND: JUDICIAL WAIVERS TO ADULT COURTS (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

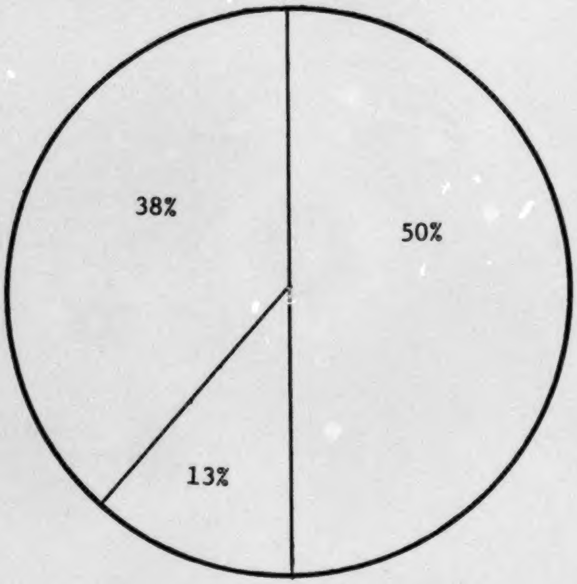
County	Total Waivers	Offenses[a] Murder/ Man- slaughter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Personal	Bur- glary	Other Prop- erty	Public Order	Other General	Unknown
Rhode Island Total[b]	8	1	*	*	*	[illegible]	1	2	2	*	*	1

* denotes Not Available.

a. Only most serious offense per individual listed.

b. Breakdown by county was not available.

FIGURE 40-1. RHODE ISLAND: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS (BY OFFENSE CATEGORY) IN 1978



Offenses[a]

Personal	38%
Property	50%
Public Order	0%
Other General	0%
Unknown	13%

N = 8

---

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 25 percent of all offenses in the state.

Table 40-4 represents the judgments of youth waived to adult courts in 1978. Four of the eight cases were held open or continued (other category). Among the remaining four cases, one-half were dismissed and the other two youth were found guilty.

TABLE 40-4. RHODE ISLAND: JUDICIAL WAIVERS TO ADULT COURTS (BY JUDGMENTS IN ADULT COURTS) IN 1978

	Total Waivers	Judgments				
		Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other[a]
Rhode Island Total[b]	8	0	2	0	2	4

a. Held open or pending.

b. Breakdown by county was not available.

Table 40-5 shows the sentences imposed on youth tried in adult courts. Of the two found guilty, both were committed to state adult corrections institutions.

TABLE 40-5. RHODE ISLAND: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS (BY SENTENCE TYPE) IN 1978

	Total Convictions	Sentence Types				
		Fined	Probation	Jail	State Adult Corrections Facilities	Other
Rhode Island Total[a]	2	0	0	0	2	0

a. Breakdown by county was not available.

Table 40-6 shows the maximum sentence durations received by the youth sentenced to incarceration in Rhode Island. One received a maximum sentence of one year or less and the other received a maximum sentence of over ten years.

TABLE 40-6. RHODE ISLAND: LENGTH OR CONFINEMENTS REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVER TO ADULT COURTS IN PHASE II COUNTIES (BY MAXIMUM SENTENCE) IN 1978

		Sentence Maximums							
	Total Confinement	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death
Rhode Island Total[a]	2	1	0	0	0	1	0	0	0

a. Breakdown by county was not available.

It should again be noted that data on youth tried in adult courts due to their exclusion from juvenile court jurisdiction because of two prior juvenile adjudications for indictable offenses were not available by the state.

Table 40-7 provides a summary of the number of cases reported in the preceding tables concerning total referrals to adult courts; the number selected for Phase II investigation; and findings concerning conviction and confinement practices applicable to these youth. Because the Rhode Island Supreme Court provided aggregated data for the entire state system, Phase II data were generally available on all eight judicial waivers reported. One-quarter (two) of the youth were determined to be guilty and both received sentences of confinement.

TABLE 40-7. RHODE ISLAND: SUMMARY OF TABLES (BY LEGAL MECHANISM)

	Judicial Waiver
Total Referrals to Adult Courts in 1978 (Table 40-1)	8
Total Referrals Selected for Phase II (Table 40-2)	8
Total Referrals Resulting in Convictions (Table 40-5)	2
Total Convictions Resulting in Sentences of Confinement (Table 40-6)	2

In summary, few youth were waived to adult criminal courts in Rhode Island in 1978. All eight were 17 years old and male; half were white and half minority youth. Forty-three percent were transferred for personal offenses, the remainder for property offenses. Two cases were dismissed and two cases were found guilty. Four of the cases were held open or continued. Of the two youth found guilty, both were committed to state adult corrections institutions. One received a maximum sentence of one year or less and one a maximum sentence of over ten years.

Routinely Handled Traffic Offenses

When juveniles 16 years of age or older violated Rhode Island traffic ordinances in 1978, the cases were routinely handled in adult courts. Table 40-8 presents state-supplied information on the number of youth referred to adult courts for excluded traffic offenses. In total, 5,913 youth between 16 and 18 years of age were reported to have been referred to adult courts for these excluded offenses, indicating a 1978 rate of 376 juvenile traffic cases per 10,000 estimated juveniles in the state.

TABLE 40-8. RHODE ISLAND: JUVENILE REFERRALS TO ADULT COURTS FOR EXCLUDED TRAFFIC OFFENSES (BY JUVENILE POPULATION AND FREQUENCY OF OFFENSES) IN 1978

	Juvenile Population (Ages 8-17)[a]	Number of Excluded Traffic Offenses
Rhode Island Total[b]	157,073	5,913

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Breakdown by county was not available.

FOOTNOTES

1. Rhode Island Supreme Court, Office of the Court Administrator, *1977 Report on the Judiciary*, (Providence, R.I.: 1978), p. 4.
2. Ibid., pp. 1-4.
3. Rhode Island General Laws Annotated, Section 14-1-3.
4. Rhode Island General Laws Annotated, Section 14-1-7.
5. *Kent* v. *United States*, 383 U.S. 541 (1966).
6. Rhode Island General Laws Annotated, Section 14-1-7.
7. Rhode Island General Laws Annotated, Section 14-1-7.1.
8. Rhode Island General Laws Annotated, Section 14-1-3(F).
9. *Knott* v. *Langlois*, 231 A.2d 767; 102 R.I. 517 (1967).
10. *Kent* v. *United States*, 383 U.S. 541 (1966).
11. *In re Correia*, 243 A.2d 759; 104 R.I. 251 (1968).
12. *In re Holley*, 268 A.2d 723; 107 R.I. 615 (1970).
13. Rhode Island General Laws Annotated, Section 42-56-35.

VERMONT PROFILE

ACKNOWLEDGMENTS

The Academy extends its appreciation to the coordinators of the juvenile diversion programs in eight counties in Vermont who, under the overall coordination and leadership of Guy Fournier, collected the data. These coordinators were extremely diligent in their task of reviewing all records on 16 and 17 years old juveniles processed through the criminal justice system. Gratitude is also owed to Brenda Patterson and the Vermont Commission of the Administration of Justice; Ellen Young, Legislative Intern, Legislative Council; and Larry Abbott, Reporter of Decisions, Supreme Court of Vermont, of reviewing the Vermont profile. In addition, the Academy is indebted to the many other state and local officials who provided the additional information needed for this study.

METHODOLOGY

The coordinators of the juvenile diversion programs attached to the courts in eight Vermont counties collected the desired data on site. In addition, several of the coordinators collected data in neighboring counties in order to provide data from all 14 counties in Vermont.

Data on court filings on 16 and 17 year olds who are routinely handled in adult courts because of the maximum age of juvenile court jurisdiction were obtained through a search of the court records in all criminal courts. Phase I data on frequency of this type of referral and Phase II data on age, sex, offenses, dispositions, and sentences were obtained for all 14 counties in Vermont. Race data were not available. These data do include youth tried for traffic offenses.

In addition, when 16 and 17 year olds are referred to juvenile court by adult courts in Vermont, their adult records are sometimes expunged. Therefore, no demographic or offense data were available on these cases for 1978 in some counties.

COURT ORGANIZATION

In Vermont, the superior courts are the highest courts of general jurisdiction. There are eight superior court judges who rotate assignments to sites throughout the 14 counties.

The district courts are the statewide courts of limited jurisdiction. There are 15 districts within the district court system. The district courts' jurisdiction includes civil cases involving less than $5,000, misdemeanors, traffic cases, most felonies, and juvenile cases. The district courts have concurrent jurisdiction with superior courts over all misdemeanors and felonies carrying a penalty of less than life imprisonment. The 19 probate courts have jurisdiction over probate matters, adoption proceedings, and powers, duties, and rights of guardians and wards.

The juvenile divisions of the district courts have exclusive jurisdiction over juvenile delinquency proceedings for all individuals under the age of 16.[1] This jurisdiction may be retained until the child's 18th birthday, unless terminated by order of the court.[2] These juvenile divisions will hereafter be referred to as juvenile courts.

An overview of Vermont's courts by types of juvenile jurisdiction appears below.

VERMONT: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles[a]	Juvenile Traffic[b]
Juvenile Divisions of District Courts	Superior Courts District Courts	Juvenile Divisions of District Courts

a. Youth 16 years of age or older are adults in Vermont and routinely prosecuted in adult courts. There were no statutes in Vermont for referring juveniles under 16 years of age to adult courts in 1978. Terminology reflects standardized format of report.

b. Youth 16 years of age or older are adults in Vermont and are routinely prosecuted in adult courts for traffic violations. All juveniles under 16 years of age charged with traffic violations are handled in the juvenile division of district courts.

TRANSFER PROCESS

The initial age of juvenile court jurisdiction in Vermont extends to 16 years of age. The discussion which follows must be understood by the reader to apply to two distinct time periods, due to radical changes in the Vermont Code which occurred in 1981. In describing the transfer process, the first section presents the legal provisions in effect at the time the Academy conducted its 1978 survey. A second section describes the effect of the 1981 amendments on the referral of youth to adult courts. The remainder of the profile is to be read in the context of the 1978 statutory language, despite the subsequent amendments.

There were no statutory provisions for referring juveniles under 16 from juvenile courts to adult courts in 1978. Only youth 16 years of age or older were eligible for prosecution in adult courts due to the lower age of criminal jurisdiction. However, in 1978 individuals older than 16 who committed a delinquent act before reaching 16 were transferred to juvenile courts.[3] Individuals from 16 to 18 years of age could, at the discretion of the adult courts, be transferred to juvenile courts and were considered delinquent juveniles for the remainder of the judicial proceedings. No hearing was required for transfer to juvenile courts.[4] It appears from the form of the statute that transfers were initiated by the courts themselves. In 1978, the Vermont Supreme Court adopted as governing those principles set forth in Kent and Gault in reverse waiver cases to juvenile courts. (See case law section). Minor traffic violations, committed by individuals after becoming 16 years of age are not considered delinquent acts, and are handled in the district courts' traffic sessions.[5] These youth cannot be transferred to juvenile courts.

Vermont passed legislation, effective July 17, 1981, that substantially modified the referral of youth under 16 to adult courts and the referral of youth, 16 to 18 years of age, to juvenile courts.

After a petition has been filed alleging delinquency, upon motion of the state's attorney and after a transfer hearing, the juvenile courts may transfer jurisdiction to a court of criminal jurisdiction if the youth was 10 to 14 years of age when the alleged act occurred and if the offense was one of a specified list. These offenses include: arson causing death, assault and robbery with a dangerous weapon, assault and robbery causing bodily injury, aggravated assault, murder, manslaughter, kidnapping, maiming, sexual assault, aggravated sexual assault, and burglary of sleeping apartments at night.

Before the juvenile courts can transfer jurisdiction, they must determine that there is probable cause to believe that the youth committed the act and that public safety and the interest of the community would not be served by treating the youth as a delinquent. In making the latter determination the court must consider:

- the maturity of the juvenile as determined by consideration of his age; home; environment; emotional, psychological and physical maturity; and relationship with and adjustment to school and the community;

- the extent and nature of the juvenile's prior record of delinquency;
- the nature of past treatment efforts and the nature of the juvenile's response to them;
- whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- the nature of any personal injuries resulting from or intended to be caused by the alleged act;
- the prospects for rehabilitation of the juvenile by use of procedures, services, and facilities available through juvenile proceedings;
- whether the protection of the community would be better served by transferring jurisdiction from the juvenile court to a court of criminal jurisdiction.[6]

Youth 14 to 16 years of age charged with any offense listed in the previous paragraph have been excluded from juvenile court jurisdiction and are automatically prosecuted as adults. These youth may be transferred at the discretion of criminal courts to the juvenile courts and proceeded against under the delinquency provisions.

Youth between 16 and 18 years of age at the time of the alleged offense and charged with offenses not on the list of those statutory offenses may be charged by the state's attorney in either juvenile or criminal courts due to concurrent jurisdiction. If youth are charged in the criminal courts, the courts may transfer the proceeding to the juvenile courts, and be subject to delinquency proceedings. There are no specific factors to be considered by criminal courts in the decision to transfer to juvenile courts.

In addition, if youth under 16 years of age who have been prosecuted as adults and are not convicted of one of the serious offenses listed above, but are convicted of one or more lesser offense, they must be transferred to the juvenile courts for disposition.[7]

CASE LAW SUMMARY

Due to the fact that Vermont had a maximum age of initial juvenile court jurisdiction of under 16 years, and did not have a statute providing for referral of individuals from juvenile to adult courts, the cases in this summary, heard since 1950, deal almost exclusively with the procedural requirements of criminal action against persons under 18 years of age.

The Vermont Supreme Court, in *In re Mears*, held that the statutory requirement that a minor who is charged with a felony be represented by counsel cannot be waived.[8] Therefore, any felony conviction obtained in the absence of counsel must be vacated. Further, in *In re Dobson*, the court held that a guardian ad litem must be appointed in any case where a minor is charged with a crime and the minor cannot make a legally binding waiver of this appointment.[9] The court did, however, refuse to apply the rule of *Dobson* retroactively in *In re Westover*, *In re Russel*, and *In re Fletcher*.[10]

In *In re Reuschel*, the court held that a trial court is vested with the discretion to accept or reject a plea regardless of the defendant's age.[11] Finally, in *State* v. *Powers*, the Vermont Supreme Court held that adequate findings of fact must be included in the record of a "reverse waiver" proceeding so that meaningful review might be had on appeal.[12] The court adopted as governing the principles set forth in *Kent* v. *United States* and *In re Gault*.[13]

CORRECTIONS INFORMATION

The Department of Corrections administers adult probation and parole services and supervises community corrections facilities. Youth from 16 to 18 years of age tried as adults may be placed on adult probation or sent to one of several community corrections facilities.

Adjudicated juveniles can be referred to the Social Services Division of the Department of Social and Rehabilitation Services, which has established juvenile service units providing community-based treatment services. These services are nonsecure alternatives to juvenile institutions and include family homes, foster homes, group homes and wilderness camps. Juveniles adjudicated delinquent may not be placed by the courts in adult facilities.[14] There is no provision for administratively transferring juveniles from juvenile to adult facilities.

A relatively recent major reorganization of Vermont corrections resulted in the closing of the only state juvenile institution and the development of community corrections facilities to replace the state prison for adults and the development of nonsecure placement options for juveniles. In 1981, the legislature reconsidered the creation of juvenile institutions. At this writing, the outcome is unknown.

Effective July 18, 1981, the following provisions were added to the juvenile code. If youth are convicted of offenses in criminal courts, the court shall sentence the youth as adults. However, if imprisonment has been imposed, the commissioner of corrections shall not place youth under 16 years of age in a facility primarily housing adults 18 years of age or over, other than on a temporary basis. At the youth's sixteenth birthday, transfer to an adult institution may be made, if time remains in the term of imprisonment. Likewise, youth under 16 years of age cannot be detained in a facility primarily housing adults 18 years of age or older.[15]

STATE DATA SUMMARY

In Vermont, initial juvenile court jurisdiction extends to the 16th birthday. Jurisdiction by the juvenile courts may be kept for an adjudicated juvenile until the youth is 18. There was no provision for referring juveniles from juvenile courts to adult courts in 1978. Individuals 16 to 18 years old are ordinarily tried in adult courts. However, in 1978 if the offense was committed prior to the youth's 16th birthday, then the youth must have been transferred to juvenile courts. Also, any youth from 16 to 18 years old could have been transferred to juvenile courts, if the criminal courts deem it appropriate. This does not apply to traffic violations.

Table 46-1 is a display by county of youth appearing in adult courts in 1978 due to the lower age of criminal jurisdiction in Vermont. Incidence rates per 10,000 juvenile population ages eight through 17 are also shown by county. Data from Franklin and Grand Isle Counties are combined because court records did not distinguish cases from the respective counties. Chittenden County, the most populated county, also handled the most 16 and 17 year olds in adult courts with 227 youth. However, the majority of counties had a higher rate per 10,000 eight to 17 year olds of this group of youth in adult courts. Again, it should be noted that Franklin and Grand Isle Counties' data could not be reported individually.

TABLE 46-1. VERMONT: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17)[a]	Age of Jurisdiction Cases	Age of Jurisdiction Rate[b]
Addison	4,922	90	182.852
Bennington	5,452	140	256.787
Caledonia	4,445	59	132.733
Chittenden	19,578	227	115.946
Essex	1,185	11	92.827
Lamoille	2,990	71	237.458
Orange	3,570	34	95.238
Orleans	4,015	30	74.720
Rutland	10,071	173	171.780
Washington	9,121	120	131.565

TABLE 46-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Age of Jurisdiction Cases	Rate[b]
Windham	6,057	154	254.251
Windsor	8,255	55	66.626
Franklin and Grand Isle	7,468	134	179.432
Total	87,129	1,298	148.975

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

The remainder of this section contains a series of tables and a brief discussion pertaining to the Phase II information gathered about 16 and 17 year olds tried in Vermont adult courts in 1978 due to the lower age of criminal jurisdiction. Phase II information was gathered from all Vermont counties.

Table 46-2 displays the demographic data gathered from Vermont counties on the age and sex of youth under 18 in adult courts. Race data were unavailable. From the known data, youth 16 years old represented 35 percent and 17 year olds 65 percent of the state total. Males reflected 89 percent and females 11 percent of the referrals for which sex was reported.

TABLE 46-2. VERMONT: YOUTH REFERRALS TO ADULT COURTS DUE TO AGE OF JURISDICTION (BY COUNTY AND BY AGE AND SEX) IN 1978[a]

County	Total Referrals	Age			Sex		
		16	17	Unknown[b]	Male	Female	Unknown[b]
Addison	90	17	51	22	61	7	22
Bennington	140	40	70	30	97	13	30
Caledonia	59	25	33	1	55	4	0

TABLE 46-2. (Continued)

County	Total Referrals	Age			Sex		
		16	17	Un-known[b]	Male	Female	Un-known[b]
Chittenden	227	84	107	36	156	35	36
Essex	11	4	7	0	10	1	0
Lamoille	71	23	37	11	50	10	11
Orange	34	10	24	0	31	3	0
Orleans	30	10	20	0	24	6	0
Rutland	173	47	91	35	126	12	35
Washington	120	33	64	23	90	7	23
Windham	154	47	83	24	119	11	24
Windsor	55	3	31	21	33	1	21
Franklin and Grand Isle	134	38	96	0	125	9	0
State Total	1,298	381	714	203	977	119	202

a. Race data were unavailable.

b. The unknown cases were primarily those cases where records had been expunged.

The offenses for which youth under 18 were charged in Vermont adult courts are displayed in Table 46-3. The two categories of known offenses, "other property" and "public order," each account for 30 percent of the known offenses. The "other general" category, which is the next largest, represented 22 percent of the known offenses. Other property offenses include larceny, auto theft, trespassing, forgery, fraud, and receiving or possessing stolen property. Public order offenses include drug and liquor violations, disorderly conduct, vandalism, prostitution, malicious destruction, and suspicious persons. The other general offenses are primarily traffic offenses. Figure 46-1 graphically depicts these offense categories, including the percentage of unknown offenses.

TABLE 46-3. VERMONT: YOUTH REFERRALS TO ADULT COURTS DUE TO AGE OF JURISDICTION (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

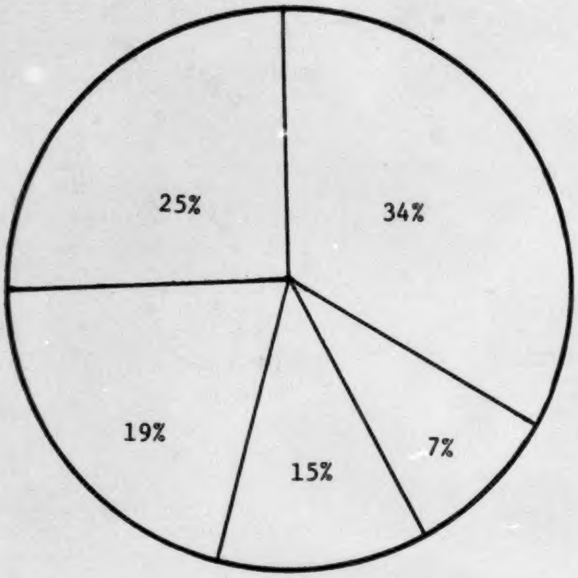
		Offenses[a]										
County	Total Referrals	Murder/ Man-slaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown[b]
Addison	90	*	*	*	2	1	*	8	21	19	17	22
Bennington	140	*	*	*	6	1	3	11	29	34	26	30
Caledonia	59	0	0	0	3	1	2	4	14	14	21	0
Chittenden	227	*	*	1	12	2	4	27	61	64	20	36
Essex	11	0	0	0	1	0	1	0	3	1	5	0
Lamoille	71	0	0	0	3	0	0	6	27	13	22	0
Orange	34	0	0	0	0	0	0	4	10	15	5	0
Orleans	30	0	0	0	1	0	1	5	3	5	15	0
Rutland	173	*	*	*	3	*	4	13	55	27	36	35
Washington	120	*	*	*	7	*	1	11	28	37	13	23
Windham	154	*	*	*	4	*	3	14	47	37	25	24
Windsor	55	*	*	*	2	*	*	2	8	8	14	21
F[illegible]in and G[illegible] Isle	134	0	0	0	0	11	6	10	24	56	27	0
Sta[illegible] Tot[illegible]	1,298	0	0	1	44	16	25	115	330	330	246	191

* denotes Not Available.

a. Only most serious offense per individual listed.

b. The unknown cases were primarily those cases where records had been expunged.

FIGURE 46-1. VERMONT: PERCENTAGE OF YOUTH REFERRALS TO ADULT COURTS DUE TO AGE OF JURISDICTION (BY OFFENSE CATEGORY) IN 1978



Offenses[a]

Personal	7%
Property	34%
Public Order	25%
Other General	19%
Unknown[b]	15%

N = 1,298

---

[a] Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent one percent of all offenses in the state.

[b] The unknown cases are primarily those cases where records had been expunged.

Table 46-4 gives a more explicit breakdown of offense information for youth under 18 in adult courts. Property offenses is the largest combined category, with 40 percent (445) of the known offenses (1,107). Personal offenses, which includes violent offenses, assault and battery, and other personal offenses, is the smallest with eight percent (86) of the known total. Violent offenses represented two percent of the known total. None were murder, manslaughter, or rape, however. Offenses included in the "other personal" category are weapons violations, intimidation, and lesser sex offenses. Larceny, traffic, and other public order (disorderly conduct, vandalism, suspicious person) are the three largest offense categories with 19 percent, 18 percent, and 18 percent, respectively, of the known offenses. Examples of other property offenses are forgery, fraud, and receiving or possessing stolen property.

TABLE 46-4. VERMONT: YOUTH REFERRALS TO ADULT COURTS DUE TO AGE OF JURISDICTION (BY OFFENSE TYPE AND FREQUENCY) IN 1978

Types of Offenses	Violent Offense Subtotals	Offense Category Subtotals	Totals
PERSONAL OFFENSES			86
Violent Offenses		17	
Murder	0		
Manslaughter	0		
Rape	0		
Robbery	1		
Aggrevated Assault	16		
Arson		4	
Kidnapping		1	
Assault/Battery		44	
Other Personal		20	
PROPERTY OFFENSES			445
Burglary		115	
Larceny		209	
Auto Theft		37	
Trespassing		33	
Other Property		51	
PUBLIC ORDER OFFENSES			330
Drug Violations		20	
Liquor Violations		114	
Other Public Order		196	

TABLE 46-4. (Continued)

Types of Offenses	Violent Offense Subtotals	Offense Category Subtotals	Totals
OTHER GENERAL OFFENSES			246
Status Offenses[a]		22	
Offenses Against the Family		—	
Traffic		200	
Other General		24	
UNKNOWN			191
TOTAL OFFENSES			1,298

-- denotes not Applicable.

a. These referrals may have been made for status offenses so designated which do apply to adults. They should not be confused with juvenile status offenses.

Judgment information on youth under 18 appearing in adult courts is displayed in Table 46-5. Of the 1,276 known judgments, sixty-one percent (783) were judged guilty and 22 percent (275) were dismissed (excluding unknown and pending cases) two youth were found not guilty; seventeen percent (216) were referred to juvenile courts.

The adult court records of 191 of these youth were expunged and, therefore, no demographic or offense information was available. Final judgment and sentencing would have occurred in juvenile courts for all these referrals.

TABLE 46-5. VERMONT: YOUTH REFERRALS TO ADULT COURTS DUE TO AGE OF JURISDICTION (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

		Judgments					
County	Total Referrals	Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other[a]	Unknown
Addison	90	0	13	22[b]	53	2	0

TABLE 46-5. (Continued)

County	Total Referrals	Judgments Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other[a]	Unknown
Bennington	140	0	18	30[b]	91	1	0
Caledonia	59	0	10	5	44	0	0
Chittenden	227	0	62	36[b]	128	1	0
Essex	11	0	1	0	9	1	0
Lamoille	71	0	23	13	34	1	0
Orange	34	0	10	2	22	0	0
Orleans	30	0	1	5	23	1	0
Rutland	173	1	37	35[b]	97	2	1
Washington	120	0	38	23[b]	56	3	0
Windham	154	1	27	24[b]	101	1	0
Windsor	55	0	15	21[b]	19	0	0
Franklin and Grand Isle	134	0	20	0	106	8	0
State Total	1,298	2	275	216	783	21	1

a. Held open or referred back to another state.

b. The records of these youth have been expunged; therefore, no additional information was available on them (N=191).

Sentencing information on the 783 youth found guilty in Vermont adult courts is shown on Table 46-6. Those committed to the Department of Corrections reflect 16 percent of the cases. Most youth, 64 percent (505), received fines, and 17 percent (133) were placed on probation.

TABLE 46-6. VERMONT: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM YOUTH REFERRALS TO ADULT COURTS DUE TO AGE OF JURISDICTION (BY COUNTY AND BY SENTENCES RECEIVED IN ADULT COURTS) IN 1978

		Sentence Types			
County	Total Convictions	Fined	Probation	State Adult Corrections Facilities	Other
Addison	53	25	0	28	0
Bennington	91	68	14	9	0
Caledonia	44	28	11	5	0
Chittenden	128	73	11	24	20
Essex	9	7	2	0	0
Lamoille	34	18	13	2	1
Orange	22	11	4	7	0
Orleans	23	22	0	1	0
Rutland	97	60	22	15	0
Washington	56	29	24	3	0
Windham	101	68	16	17	0
Windsor	19	17	0	2	0
Franklin and Grand Isle	106	79	16	11	0
State Total	783	505	133	124	21

Table 46-7 reflects the sentence durations of youth sentenced to incarceration. From known sentences, all received less than ten years maximum sentences. Seventy-seven percent (93) received one year or less, and 17 percent (21) received sentences of over one through three years. Few (six percent) were given maximum terms of over three years.

TABLE 46-7. VERMONT: LENGTH OF CONFINEMENTS REPORTED FOR SENTENCES ARISING FROM YOUTH REFERRALS TO ADULT COURTS DUE TO AGE OF JURISDICTION (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

		Sentence Maximums								
County	Total Confinement	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Addison	28	26	1	*	*	*	*	*	*	1
Bennington	9	5	4	0	0	0	0	0	0	0
Caledonia	5	1	2	1	*	*	*	*	*	1
Chittenden	24	19	3	*	1	*	*	*	*	1
Lamoille	2	1	1	0	0	0	0	0	0	0
Orange	7	7	0	0	0	0	0	0	0	0
Orleans	1	1	0	0	0	0	0	0	0	0
Rutland	15	11	2	1	1	0	0	0	0	0
Washington	3	3	0	0	0	0	0	0	0	0
Windham	17	12	5	0	0	0	0	0	0	0
Windsor	2	1	1	0	0	0	0	0	0	0
Franklin and Grand Isle	11	6 est	2 est	2 est	1 est	0	0	0	0	0
State Total	124	93	21	4	3	0	0	0	0	3

Table 46-8 provides a summary of the number of cases reported in the preceding tables concerning total referrals to adult courts; the number selected for Phase II investigation; and findings concerning conviction and corrections sentences applicable to these youth. All of the 1,298 youth under 18 reported upon were selected for Phase II study. Among this group, 783 youth were known to have been found guilty in adult courts and 124 received sentences of incarceration.

TABLE 46-8. VERMONT: SUMMARY OF TABLES (BY LEGAL MECHANISM)

	Age of Jurisdiction
Total Referrals to Adult Courts in 1978 (Table 46-1)	1,298
Total Referrals Selected for Phase II (Table 46-2)	1,298
Total Referrals Resulting in Convictions (Table 46-6)	783
Total Convictions Resulting in Sentences of Commitment (Table 46-7)	124

In summary, youth appearing in Vermont adult courts in 1978 were mostly male, (89 percent), and all were either 16 or 17 years old. Most of the offenses were property crimes (40 percent). Sixty-one percent were convicted, with 64 percent of this percentage receiving fines and 17 percent probation. The majority of committed youth (77 percent) received terms of one year of less.

FOOTNOTES

1. Vermont Statutes Annotated, Title 33, Sections 632(a)(1) and 633.
2. Vermont Statutes Annotated, Title 33, Section 634.
3. Vermont Statutes Annotated, Title 33, Section 635(a).
4. Vermont Statutes Annotated, Title 33, Section 635(b).
5. Vermont Statutes Annotated, Title 33, Section 632(a)(3).
6. Vermont Statutes Annotated, Title 33, Section 635a(a).
7. Vermont Statutes Annotated, Title 33, Section 635a(d).
8. *In re Mears*, 198 A.2d, 124 Vt. 131 (1964).
9. *In re Dobson*, 212 A.2d 620, 125 Vt. 165 (1965). See also, *State* v. *Reuschel*, 312 A.2d 739, 131 Vt. 554 (1973).
10. *In re Westover*, 215 A.2d 498, 125 Vt. 354 (1965). *In re Russel*, 227 A.2d 289, 126 Vt. 240 (1967). *In re Fletcher*, 230 A.2d 800, 126 Vt. 366 (1967).
11. *In re Reuschel*, 376 A.2d 746, 135 Vt. 348 (1977).
12. *State* v. *Powers*, 385 A.2d 1067 (1978).
13. *Kent* v. *United States*, 383 U.S. 541 (1966). *In re Gault*, 387 U.S. 1 (1967).
14. Vermont Statutes Annotated, Title 33, Section 657(a).
15. Vermont Statutes Annotated, Title 33, Section 662(b).

*U.S. GOVERNMENT PRINTING OFFICE: 1982-0-361-233/1903